UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-03197-KMM-SGE

MARTIN BERCHIE,

Petitioner,

v.

PAMELA BONDI et al.,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND OPPOSITION TO EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Martin Berchie filed this habeas petition to seek release from detention by the U.S. Immigration and Customs Enforcement ("ICE") pending his removal from the country. Berchie also filed a motion for a temporary restraining order, asking the Court for immediate release and an injunction barring ICE from detaining a class of noncitizens who are subject to final orders of removal. For purposes of efficiency, Respondents Pamela Bondi, Kristi Noem, Todd M. Lyons, Marcos Carlos, Sam Olson,[1] ICE, and the Department of Homeland Security are submitting a combined response to the petition and to Berchie's motion for a temporary restraining order.

Berchie is not entitled to habeas relief. His removal to Ghana is substantially likely to occur in the foreseeable future, and his speculation to the contrary does not overcome the evidence submitted with this response. Denying Berchie's habeas petition will render his pursuit of a temporary restraining order moot. But even if the Court determines that further habeas proceedings are required, Berchie's motion for a temporary restraining order should be denied on the merits.

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[1] Respondent Sam Olson is substituted for Peter Berg. *See* Fed. R. Civ. P. 25(d).

BACKGROUND

Respondents draw the following background from Berchie's petition, as well as from the Declaration of Thomas Murphy ("Murphy Decl.") and the accompanying exhibits.

I. Berchie's Background and Criminal Activity

Berchie is a citizen of Ghana who was admitted to the United States in August 2018, as an F1 non-immigrant. Pet. ¶ 2; Murphy Decl. ¶ 4. He was authorized to remain in the country until December 20, 2019, or for the duration of his student status. Murphy Decl. ¶ 4. Berchie enrolled as a college student, but he withdrew less than two months after entering the United States. Murphy Decl. ¶ 5. As a result of Berchie's failure to maintain student status, his authorization to remain in the United States expired in December 2019. Murphy Decl. ¶ 4.

On August 25, 2020, Berchie was charged in Minnesota state court with one count of Third Degree Criminal Sexual Conduct and one count of Fourth Degree Criminal Sexual Conduct, in violation of Minnesota Statutes §§ 609.344 and 609.345 (respectively). Murphy Decl. ¶ 6, Ex. A. The charges arose out of an incident in August 2020, during which Berchie had forcible and non-consensual sex with a woman he invited into his home. Murphy Decl. Ex. A. Berchie pled guilty to the lower-severity charge in September 2021, admitting that he made sexual contact with the victim without her permission by using coercion and acting with sexual or aggressive intent. Murphy Decl. Ex. A. The charge of Third Degree Criminal Sexual Conduct was dismissed. Murphy Decl. Ex. A.

Berchie was sentenced to 517 days in jail (which amounted to time served) and placed on supervised probation for 10 years. Murphy Decl. ¶ 9, Ex. A. He was also required to register as a predatory offender. Murphy Decl. Ex. A.

II. Berchie's Removal Proceedings and Initial Detention

ICE officials took Berchie into immigration custody in November 2020 and served him with a Notice to Appear the began removal proceedings in immigration court. Murphy Decl. ¶¶ 7-8, Ex. B. In March 2021, an immigration judge entered an order directing that Berchie be removed to Ghana. Pet. ¶ 40; Murphy Decl. ¶ 10, Ex. C. Although Berchie appealed that order to the Board of Immigration Appeals ("BIA"), he later withdrew his appeal and is now subject to a final removal order. Pet. ¶¶ 41-42; Murphy Decl. ¶¶ 11.

ICE released Berchie from detention on January 31, 2022, pursuant to an order of supervision. Pet. ¶ 45; Murphy Decl. ¶ 12. ICE decided to release Berchie rather than detain him pending removal because Ghana was not timely issuing a travel document at that point. Murphy Decl. ¶ 12.

III. Berchie's Current Detention

On August 4, 2025, ICE revoked Berchie's order of supervision. Murphy Decl. ¶ 13, Ex. D. He was taken into custody a few days later and is now detained because there is a significant likelihood of his removal to Ghana in the foreseeable future. Pet. ¶ 51; Murphy Decl. ¶ 13, Ex. D. ICE personnel submitted a new request for a travel document on August 12, 2025, which is pending. Murphy Decl. ¶¶ 14-15. But Ghana's historical cooperation with removals from the United States supports the agency's belief that a travel document will be issued soon, and Berchie will be removed from the United States in the foreseeable

future. Murphy Decl. ¶¶ 15-16. In particular, the Embassy in Ghana has issued 70 travel documents so far this year, and two more applications for travel documents are pending. Murphy Decl. ¶ 16. Berchie himself is tentatively scheduled for a nationality verification interview with the Embassy in Ghana next week. Murphy Decl. ¶ 15.

IV. Procedural History

Berchie filed this action on August 11, 2025, seeking relief under 28 U.S.C. § 2241. Pet. ¶¶ 65-75. The gravamen of Berchie's petition is that ICE has already detained him for six months, which is the presumptively reasonable length of time that the agency can detain an individual while working to effectuate his removal. Pet. ¶¶ 73-75. Berchie also filed a motion for a temporary restraining order to block ICE from transferring him out of Minnesota and to secure his immediate release from custody. Dkt. 2. The Court ordered a response to the habeas petition, Dkt. 6, which Respondents now timely submit with their opposition to Berchie's motion for a temporary restraining order.

ARGUMENT

The Court should deny Berchie's habeas petition and motion for a temporary restraining order. Berchie's pursuit of habeas relief is premised on the idea that his removal is not significantly likely to occur in the reasonably foreseeable future. Pet. ¶¶ 9, 97. Yet the evidence accompanying this response demonstrates that ICE is diligently working to coordinate Berchie's return to Ghana. As to Berchie's request for a temporary restraining order, the Court should deny the motion as moot after denying his habeas petition. Mootness aside, Berchie fails to demonstrate that the extraordinary step of a temporary restraining order (or preliminary injunction) is appropriate in this case.

I. Berchie's Habeas Petition[2]

A. Jurisdiction, Burden of Proof, and Scope of Review

Berchie seeks relief under 28 U.S.C. § 2241, which gives district courts jurisdiction to hear habeas petitions brought by individuals in federal custody. As the petitioner, Berchie bears the burden of proving that he is in custody in violation of the Constitution or the laws of the United States. Judicial review is narrow in immigration matters, including challenges to immigration detention. *See I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *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) (citations and internal quotation marks omitted).

These limitations are important in habeas actions that challenge a noncitizen's civil immigration detention. Federal 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. *See Shaughnessy v.*

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[2] Berchie names ICE and the Department of Homeland Security as respondents in his petition. Pet. ¶¶ 25, 27. But agencies are not proper respondents in a habeas action. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). The Court should therefore dismiss ICE and the Department of Homeland Security as parties to this case.

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.").

Berchie's challenge in this case is to his detention pending removal. Pet. ¶¶ 65-75.[3] He contends that ICE's decision to re-detain him violates the Due Process Clause because there is no significant likelihood of his removal in the foreseeable future. Pet. ¶¶ 76-78. That is a *Zadvydas* claim, the framework for which Respondents will outline below. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Berchie also suggests that his re-detention is punitive. Pet. ¶¶ 79-80. But those allegations are subsumed by the *Zadvydas* claim: if ICE is lawfully detaining Berchie due to a likelihood of removal in the foreseeable future, then his detention obviously is not punitive. After all, the Supreme Court recognizes the government's compelling interest in "assuring [an] alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699.

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[3] Berchie also invokes the Administrative Procedure Act. *See* Pet. ¶¶ 99-104. But this is a habeas action and not an APA case, as evidenced by the fact that Berchie paid only a $5.00 filing fee. Habeas petitioners are limited to challenging the fact or duration of their confinement. *Spencer v. Haynes*, 774 F.3d 467, 469-71 (8th Cir. 2014); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Thus, the Court lacks habeas jurisdiction over Berchie's improper request for judicial review under the APA.

It is also worth emphasizing at the outset that Berchie cannot use this petition to challenge the validity of his underlying removal order. Jurisdiction over that type of challenge lies with an immigration court in the first instance, and then with the appropriate federal court of appeals. *See* 8 U.S.C. § 1252; *Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007).

B. Legal and Statutory Authority for Detention Pending Removal

ICE has the authority to detain Berchie pending his removal from the United States. For more than two centuries, immigration officials have had the authority 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, 233 (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, and 1231. Once a noncitizen is subject to a final removal order—as Berchie is here—detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. part 241.

A noncitizen who has been ordered removed lacks a legal right to remain in the United States, and his liberty interest in remaining in the country is reduced. Accordingly, federal law provides that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days" and "shall detain

the alien" during the removal period. 8 U.S.C. § 1231(a)(1)(A) and (a)(2)(A).[4] The "removal period" is the period during which the Department of Homeland Security begins to take steps to execute the noncitizen's final removal order. *See id.* § 1231(a)(1)(A)-(B). That period begins on the latest of: (1) the "date the order of removal becomes administratively final"; (2) "[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 (3) "[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).

Detention during the 90-day removal period can be extended in some circumstances. For example, noncitizens who are removable after being convicted of an aggravated felony may be detained beyond 90 days. *Id.* § 1231(a)(6); *see also id.* § 1231(a)(1)(C) (suspension of removal period when noncitizen fails to make timely application for travel documents or acts to prevent removal). The Department of Homeland Security also conducts periodic post-order custody reviews to determine whether a noncitizen subject to a final removal order should continue to be detained beyond the removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other noncitizens).

After the removal period expires, a noncitizen may be released under an order of supervision. *See* 8 C.F.R. § 241.13. Specifically, a noncitizen held beyond the removal period can seek release from custody by showing that "there is no significant likelihood of

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[4] Although § 1231 and other provisions of the INA refer to the "Attorney General," the Homeland Security Act of 2002 transferred many immigration enforcement and administrative functions to the Secretary of Homeland Security. *See* Pub. L. No. 107-296, 116 Stat. 2135 (2002).

removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." *Id.* § 241.13(a). However, the Department of Homeland Security can revoke release "if, 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." *Id.* § 241.13(i)(2). The procedures for revocation are set out in a federal regulation, which requires that the noncitizen:

> 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 . . . . 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. § 241.13(i)(3). After a noncitizen is re-detained using these procedures, § 241.4 governs his continued detention pending removal. *Id.* § 241.13(i)(2).

C. Berchie's Challenge to his Detention

Berchie's habeas petition challenges his continued detention on procedural grounds (Count Two) and on substantive grounds (Count Three). Pet. ¶¶ 90-98. These claims fail. As explained below, the written notice that ICE provided to Berchie when revoking his Order of Supervision complied with the applicable regulations. And contrary to Berchie's bald allegations, there is ample evidence to show a significant likelihood of his removal in the foreseeable future. Berchie's continued detention is therefore appropriate, and the Court should deny his habeas petition in its entirety.

1. Berchie's Procedural Challenge

Count Two of the petition asserts a procedural challenge to Berchie's re-detention. He argues that the Notice of Revocation of Release did not satisfy the requirements set out in 8 C.F.R. § 241.13(i)(2)-(3) and was insufficient to revoke his Order of Supervision. Pet. ¶¶ 91-92. But the declaration and supporting exhibits filed with this response lay that assertion bare.

ICE is authorized to revoke a noncitizen's release and return him to custody "if, on account of changed circumstances, the [agency] 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). That is what happened here. ICE personnel recently determined that they would likely be able to remove Berchie from the United States in the near future, so the agency revoked his release. Murphy Decl. ¶¶ 13-16. Berchie's brief in support of his motion for a temporary restraining order argues that ICE needed "to provide credible evidence of the changed circumstances" and "identify the changed circumstances that justify redetention." Dkt. 3, at 9. Yet that is not the law. The regulation says nothing at all about "providing evidence" or "identifying the changed circumstances" in a Notice of Revocation of Release. And Berchie tellingly does not cite any cases reading such requirements into 8 C.F.R. § 241.13(i)(2). To the extent Berchie seeks habeas relief due to omitted information in the Notice of Revocation of Release, his petition fails for the simple reason that the law does not require anything more than what Berchie received.

But Berchie's challenge is not really about omitted information. As Berchie admits later in his brief, the notice in fact identified changed circumstances: ICE was in the process

of requesting a travel document. Dkt. 3, at 11-12; *see also* Murphy Decl. ¶ 13, Ex. D. Thus, Berchie's real bone of contention with the Notice of Revocation of Release is that he does not believe it. He doubts that ICE was pursuing a travel document in August 2025, and he doubts that Ghana will ultimately issue one. Dkt. 3, at 11-12. The evidence proves Berchie wrong. ICE personnel must have been in the process of seeking a travel document when they arrested Berchie because the request was submitted just a few days later. Murphy Decl. ¶ 14. Ghana has historically cooperated with issuing travel documents, and ICE anticipates that the country will issue Berchie's travel document soon. Murphy Decl. ¶¶ 15-16. Berchie has no personal knowledge of ICE's preparations for requesting a travel document in early August 2025, which means his sworn statements in the petition are speculation rather than "impeachment." *See* Dkt. 3, at 11. Regardless, Berchie's personal belief that the Notice of Revocation of Release was inaccurate does not entitle him to habeas relief. "[W]here a foreign country ordinarily accepts repatriation, and that country is acting on an application for travel documents, most courts conclude the alien fails to show no significant likelihood of removal." *Jaiteh v. Gonzales*, 2008 U.S. Dist. LEXIS 115767, at *6 (D. Minn. April 28, 2008), *adopted by* 2008 U.S. Dist. LEXIS 44259 (D. Minn. May 14, 2008).

To avoid this conclusion, Berchie offers a string-cite of appellate cases remanding immigration matters to the BIA. Dkt. 3, at 12-13. His point is that BIA decisions must be detailed enough to permit meaningful judicial review. But this case does not involve the direct appeal of a decision by an immigration judge or the BIA. Nor does this case involve APA-style judicial review of any agency action. It is a ***habeas*** case, in which Berchie

challenges the constitutionality of his continued detention. If Berchie wants judicial review of the Notice of Revocation of Release under the APA (and skipping over whether the notice would even be subject to such review), then he needs to file an APA action, pay the full civil filing fee, allow the agency to prepare an administrative record, and go through cross-motions for summary judgment on the issue of whether the agency's actions were arbitrary, capricious, or contrary to law.

The rest of Berchie's procedural challenge fails as well. For example, his petition quibbles that the Notice of Revocation of Release purported to detain him under 8 C.F.R. § 241.4 rather than under 8 C.F.R. § 241.13. Pet. ¶ 60. That observation is both factually wrong and legally irrelevant. The notice referred to both provisions, Murphy Decl. Ex. D, which makes sense because § 241.13(i)(2) itself cross-references § 241.4. And no matter the words and numbers written in the notice, there is no dispute that ICE decided to re-detain Berchie pursuant to § 241.13.

Berchie's brief in support of his motion for a temporary restraining order likewise does not point to any valid procedural problem. He proclaims that ICE needed a valid travel document in-hand before detaining him, or the agency at least needed to have applied for one. Dkt. 3, at 10. But Berchie cites no authority for any of those propositions, and 8 C.F.R. § 241.13(i) certainly imposes no such requirement. Berchie also incorrectly assumes that *Zadvydas* dictates how ICE makes re-detention determinations at the administrative level. That's wrong. *Zadvydas* sets out a framework to guide federal courts sitting in habeas review, not agencies making detention decisions in the first instance. 533 U.S. at 699 ("Whether a set of particular circumstances amounts to detention within, or beyond, a

period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority. The basic federal habeas corpus statute grants the federal courts authority to answer that question."). The burden-shifting approach is for navigating constitutional claims related to ongoing detention rather than revocation and re-detention decisions under 8 C.F.R. § 241.13(i). In other words, Berchie can file (and has filed) a habeas petition to demand that Respondents make the required *Zadvydas* showings. But he cannot manufacture a procedural challenge by retrospectively grafting those requirements onto ICE's decisionmaking in the field.

One more point regarding Berchie's procedural challenge. The relief he seeks in this habeas action is a release from detention pending removal. Pet. ¶ 78. Berchie's petition fails to tie that relief to any alleged deficiencies in the process surrounding his re-detention. Specifically, Berchie would not be entitled to immediate release even if the Court agreed that ICE's notice or re-detention procedures were deficient. The appropriate remedy in that case would be for the agency to redo the process and correct any deficiencies. For this additional reason, Berchie's procedural challenge does not entitle him to habeas relief.

2. Berchie's *Zadvydas* Challenge

The main thrust of Berchie's habeas petition is that his continued detention violates 8 U.S.C. § 1231, as the Supreme Court has construed the statute under the Due Process Clause. This is Berchie's *Zadvydas* challenge.

Although the plain language of § 1231(a)(6) does not impose any limit on how long a noncitizen can be detained pending removal, the Supreme Court in *Zadvydas* "read an implicit limitation into" the statute. 533 U.S. at 689. Thus, a person subject to a final order

of removal cannot be detained indefinitely. *Id.* at 699-700. *Zadvydas* established a temporal marker: detention for six months or less is presumptively constitutional. *Id.* at 701. But continued detention does not automatically become unconstitutional after six months; longer detention still comports with due process if there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* As the Supreme Court explained:

> [a]fter 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. (emphasis added). The end result is that a habeas petitioner must meet the initial burden of demonstrating no significant likelihood of his removal in the reasonably foreseeable future. *Id.* If he makes this showing, then the government must rebut it. *Id.*

a. Premature Challenge

Berchie's *Zadvydas* claim is premature for two reasons. First, he has not yet been re-detained for more than 90 days. Section 1231(a) provides for mandatory detention during a 90-day removal period, and Berchie admits that this removal period "resets" after ICE decides to re-detain a person for removal. Pet. ¶ 72; Dkt. 3, at 7-8. Second, and related, Berchie identifies no authority for combining his 2020 detention with his 2025 re-detention to get over *Zadvydas*'s six-month mark. The petition simply assumes Berchie can do so and then asserts that his time in detention has exceeded six months in total. *See* Pet. ¶¶ 22,

97. As things stand, Berchie's current detention is presumptively constitutional because it has lasted well short of six months.

Federal district courts have confronted these issues in recent weeks and refused to combine periods of detention that were years apart. Take for example *Ghamelian v. Baker*, where a Maryland federal court considered a habeas "[p]etitioner's argument that because the 90-day statutory removal period plus a consecutive additional three-month period expired many years ago, [he] cannot be subject to further detention under § 1231(a)(6)." 2025 U.S. Dist. LEXIS 139238, at *11 (D. Md. July 22, 2025). The court rejected this argument, emphasizing that "*Zadvydas* did not (1) address a situation where an alien was released and then re-detained or (2) purport to create some sort of limitations period for § 1231(a)(6) detention." *Id.*

A different federal court reached the same conclusion in *Barrios v. Ripa*, dismissing a *Zadvydas* claim as premature where the petitioner's re-detention had not yet lasted even a month. 2025 U.S. Dist. LEXIS 153228, at *21 (S.D. Fla. Aug. 8, 2025). The *Barrios* court recognized the dangers of letting habeas petitioners combine periods of detention: "if the Court counted detentions in the aggregate, any subsequent period of detention, even one day, would raise constitutional concerns. And adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General—effectuating removals." *Id.*; *see also Meskini v. AG of the United States*, 2018 U.S. Dist. LEXIS 42058, at *13 (M.D. Ga. Mar. 14, 2018) (concluding that *Zadvydas* is not "a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past"). The same concerns are present here.

Berchie's failure to confront these issues and properly support his petition is reason enough to reject his request for habeas relief as premature. "[D]etainees awaiting removal from the United States may not file anticipatory habeas petitions prior to the six-month period having elapsed just in case their detention goes on for too long; instead, they must wait until the presumptively reasonable six-month period has passed to seek habeas relief." *Brian B. v. Tollefson*, 2024 U.S. Dist. LEXIS 158854, at *4 (D. Minn. July 26, 2024), *adopted by* 2024 U.S. Dist. LEXIS 157487 (D. Minn. Sep. 3, 2024). The Court can deny Berchie's habeas petition on this basis alone.

b. No Due Process Violation

Beyond reset removal periods and improper aggregation, the Court should deny Berchie's habeas petition because there is no due process violation in this case. Berchie cannot make the initial showing required at step one of the *Zadvydas* analysis. Moreover, Respondents have presented evidence confirming that Berchie's removal is likely to occur in the foreseeable future.

Berchie fails to satisfy the threshold requirement that he "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The petition is thin on this point, relying on the fact that Ghana did not issue a travel document to Berchie during his prior detention or supervised release. Pet. ¶¶ 47-50. Berchie's brief in support of his motion for a temporary restraining order is equally thin, stating that Berchie made the required showing in 2022 and can now forever skip past the first step of the *Zadvydas* analysis. Dkt. 3, at 9 ("[T]he government, not Petitioner, bears the burden of making an evidentiary showing that

satisfies *Zadvydas* by rebutting the showing Petitioner previously made.). Setting aside that Berchie once again cites no authority for contorting *Zadvydas* this way, his argument is one this Court has long rejected. "The mere passage of time, including concomitant delays in obtaining travel documents, is not alone sufficient to show that no such likelihood exists unless the delays are so extraordinarily long as to trigger an inference that travel documents will likely never issue at all." *Joseph K. v. Berg*, 2019 U.S. Dist. LEXIS 248455, at *6 (D. Minn. Mar. 15, 2019) (citations and internal quotation marks omitted), *adopted by* 2019 U.S. Dist. LEXIS 248456 (D. Minn. May 3, 2019). Because Berchie cannot make the threshold showing under *Zadvydas*, the Court should deny his habeas petition.

Berchie fares no better at the second step of the *Zadvydas* analysis. The record evidence rebuts any notion that there is no significant likelihood of his removal to Ghana in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. In general, courts have found no significant likelihood of removal under *Zadvydas* in five circumstances:

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.

Joseph K., 2019 U.S. Dist. LEXIS 248455, at *8-9 (citations omitted). Berchie's petition does not allege that any of these circumstances are present.

The closest Berchie comes to confronting the evidence of his upcoming removal is a confusing accusation in his brief that the government is "presuming" Ghana will not begin denying travel documents and will issue one in Berchie's case. Dkt. 3, at 11. But Berchie's continued detention is not based on any such presumptions. ICE recently submitted a request for a travel document, and Berchie's nationality verification interview is tentatively scheduled for next week. Murphy Decl. ¶¶ 14-15. Ghana has an established history of accepting its citizens for repatriation. Murphy Decl. ¶ 16. When the record shows such "diligent and reasonable efforts to obtain travel documents," and "the alien's native country ordinarily accepts repatriation, and that country is acting on an application for travel documents, most courts conclude that there is a significant likelihood of removal in the foreseeable future." *Ahmed v. Brott*, 2015 U.S. Dist. LEXIS 45346, at *15 (D. Minn. Mar. 17, 2015) (citations and internal quotation marks omitted). To the extent ICE encounters delays in obtaining a travel document, such delays would not be "sufficient to trigger an inference that there is no significant likelihood of removal; they simply show that the bureaucratic gears are slowly grinding away." *Id.* (citations, alterations, and internal quotation marks omitted).

Equally important, Berchie's current detention serves a clear purpose by "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. The Supreme Court long ago recognized that detention to facilitate removal is a legitimate governmental objective. *See Wong Wing*, 163 U.S. at 235 ("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."). Berchie has

currently been detained for less than a month, and his detention has a definitive end in sight: his removal to Ghana. Based on the record evidence, Respondents have rebutted any presumption that Berchie raised regarding the likelihood of his removal in the foreseeable future. Because the due process standards set forth in *Zadvydas* are satisfied, Berchie is not entitled to habeas relief.

That leaves Berchie's allegations about punitive detention. *See* Pet. ¶¶ 63-64, 98. He included them only for shock value. There is no evidence that local or national ICE personnel are singling out Berchie for detention, no evidence of an individualized animus against him, and not even an accusation that Berchie participated in protected speech and is now being punished for it. This case is a far cry from *Mohammed H. v. Trump*, 2025 U.S. Dist. LEXIS 117197 (D. Minn. June 17, 2025). ICE detained Berchie because an immigration judge ordered that he be removed from the United States. His re-detention is due to the agency's conclusion that it will soon succeed in carrying out that removal.

II. Berchie's Motion for a Temporary Restraining Order

Berchie fails to demonstrate that a temporary restraining order is appropriate in this case. If the Court denies Berchie's habeas petition for the reasons discussed above, then his motion for a temporary restraining order is moot. But for the sake of completeness, Respondents will discuss the *Dataphase* factors and explain why Berchie's motion should be denied on the merits as well.

To start, Berchie's proposed restraining order is antithetical to his *Zadvydas* claim. He wants the Court to block any transfer outside the District of Minnesota, Dkt. 4, which would include removing him from the United States back to Ghana. Yet the whole point

of Berchie's habeas petition is that ICE is not removing him quickly enough. Entering his proposed injunction would only exacerbate the issue supposedly giving rise to his petition.[5] *See, e.g.*, *Abdirahman A. v. DHS-ICE Chief Counsel*, 2020 U.S. Dist. LEXIS 83951, at *2 (D. Minn. Apr. 22, 2020) ("[Petitioner]'s emergency motion essentially seeks a preliminary injunction barring ICE from deporting him, but that request does not align with the relief he could ultimately obtain if his habeas petition were granted."), *adopted by* 2020 U.S. Dist. LEXIS 83532 (D. Minn. May 12, 2020). Likewise, Berchie acknowledges that the purpose of a temporary restraining order is to "preserve the status quo until the merits are determined." Dkt. 3, at 16 (citing *Dataphase Sys. v. C L Sys.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc)). But the status quo right now is that ICE is working to secure a travel document and coordinate Berchie's removal from the United States. Berchie is being detained so that he will be on-hand at the moment of his removal. An emergency injunction would ***upend*** the status quo rather than maintain it. For these reasons alone, the Court should not enter a temporary restraining order.

Moving to the *Dataphase* factors, this Court considers: (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*, 640 F.2d at 113. A movant's

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[5] The proposed injunction covering a whole group of noncitizens is even more strange. *See* Dkt. 4, at 2. This is not a class action, Berchie does not purport to bring claims on behalf of anyone else, and Berchie has not sought (or even alleged a basis) to certify a class under Federal Rule of Civil Procedure 23. The Court should summarily deny his request for a class-wide injunction.

likelihood of success on the merits "does not singularly control, but it should receive substantial weight in the court's analysis." *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1343 (8th Cir. 2024). Ultimately, "[a] preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008).

Here, Berchie cannot show any likelihood of success on the merits of his habeas petition. ICE properly re-detained him, and Respondents have provided evidence showing a substantial likelihood of his removal in the foreseeable future. Berchie's brief does not persuasively argue otherwise—he just globally incorporates "all prior arguments" and declares that the *Dataphase* factors are satisfied. Dkt. 3, at 17. Such anemic analysis cannot justify this Court taking the extraordinary step of entering injunctive relief, particularly when the evidence shows that ICE is diligently working toward Berchie's removal. The first *Dataphase* factor weighs heavily against entering a temporary restraining order.

Although the lack of a likelihood of success on the merits should be dispositive in this case, the remaining *Dataphase* factors do not collectively support injunctive relief either. In the absence of an injunction, Berchie will remain detained and be removed from the United States to Ghana. He has known for years that this was going to happen. An immigration judge determined that he should be removed to Ghana in 2021. Murphy Decl. ¶ 10, Ex. C. Although Berchie appealed the order to the BIA, he later voluntarily withdrew the appeal. Murphy Decl. ¶ 11. Thus, blocking Berchie's removal at this point does not prevent him from suffering irreparable harm; it impedes the natural consequences of immigration proceedings that concluded a long time ago.

The temporary restraining order that Berchie seeks will cause harm to the government. His proposed order would hinder ICE's ongoing removal efforts, including by blocking the agency from transferring Berchie to another facility as needed for staging ahead of a final flight to Ghana. The government would also incur costs associated with supervising Berchie outside of detention and costs associated with re-detaining him later to carry out his removal. Finally, there is a strong public interest in the efficient administration of the nation's immigration laws and in the removal of a noncitizen who was convicted of a serious felony involving forced sexual contact with a woman he invited into his home. As with the first *Dataphase* factor, the remaining factors weigh heavily against entering emergency injunctive relief.

Whether on mootness grounds or on the merits, the Court should deny Berchie's motion for a temporary restraining order.

CONCLUSION

Respondents respectfully request that the Court deny Berchie's habeas petition and accompanying motion for a temporary restraining order. No evidentiary hearing is necessary in this matter because the submissions filed with this response provide a sufficient record upon which the Court can adjudicate the petition.

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