UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Martin B.,

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.

Case No.: 25-CV-3197 (KMM/SGE)

PETITIONER'S OPPOSITION RESPONSE TO RESPONDENTS' MOTION TO EXTEND TIME (ECF NO. 14)

EXPEDITED HANDLING REQUESTED

INTRODUCTION

Petitioner filed a petition for a writ of habeas corpus and concurrently filed a motion for a temporary restraining order ("TRO") and preliminary injunction ("PI") on August 11, 2025, alleging that he is being detained in violation of law. ECF Nos. 1-4. That same day, the Court issued an Order to Show Cause ordering Respondents to state the true cause of Petitioner's detention by August 18, 2025. ECF No. 6. On August 22, 2025, the federal government Respondents submitted documents explaining, in their view, why Petitioner is lawfully detained. *See* ECF Nos. 8-9. Notwithstanding the federal Respondents'

contentions, a preponderance of the evidence demonstrates that Petitioner is being held in violation of the laws or constitution of the United States. Consequently, the Court must order Petitioner's immediate release. The magistrate judge agreed, issuing a Report and Recommendation ("R&R") on September 3, 2025. ECF No. 12. The Court then ordered Respondents to file any objections they have to the R&R on or before September 10, 2025. ECF No. 13.

Earlier today, just two days before the Court-imposed deadline for filing objections, and four days after Respondents allegedly received a travel document, Respondents filed a motion to extend the deadline to object to the R&R. *See* ECF Nos. 14-15. In an unusual maneuver, Respondents seek two additional weeks to object, in addition to the week that the Court already gave Respondents. This is one week longer than would be allowed to object to an R&R for a non-expedited non-emergency case under the local rules. The factual basis of that request falls woefully short of establishing good cause for the requested extension of time.

For the reasons that follow, the Court must deny Respondents' request to extend time to object to the R&R.

LEGAL ARGUMENT

I. Extensions of Time Are Not Favored Where Liberty Interests Are at Stake.

Federal Rule of Civil Procedure 6(b) allows extensions "for good cause" but makes clear that a party must demonstrate more than mere convenience. Courts consistently deny extensions when delay would prejudice a habeas petitioner by prolonging unlawful

custody. *See Lonchar v. Thomas*, 517 U.S. 314, 324–25 (1996) (emphasizing special urgency of habeas cases); *Boumediene v. Bush*, 553 U.S. 723, 742 (2008) (habeas is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action). Unlike in ordinary civil litigation, delay here means another day of unconstitutional imprisonment. Every additional day Petitioner remains detained without legal justification constitutes irreparable harm. *See Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (loss of liberty is the paradigmatic irreparable harm).

II. The Government's Motion Rests on an Inadmissible Assertion of a Travel Document, Not Evidence

The government predicates its request on the claim that Ghana has issued a travel document for Mr. Berchie. *See* ECF Nos. 14-15. But the only support offered is a two-paragraph affidavit from Officer Pryd asserting that he was "notified" of such issuance. ECF No. 15. No travel document is attached. *Id.* Pyrd does not even claim to have witnessed or seen the travel document himself, indicating a lack of personal knowledge. *Id.* No confirmation from the Ghanaian Embassy is provided. *Id.* Courts require competent evidence—not hearsay within an affidavit—for the extraordinary relief of extending unlawful detention. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (government bears burden to present evidence justifying continued custody); *e.g.*, *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 n.2 (D. Mass. June 20, 2025) (ICE must substantiate claims of likelihood of removal); Fed. R. Evid. 801-802.

Without producing the document itself, the government's claim remains speculative. Habeas cannot be delayed on the basis of conjecture. *See Zadvydas v. Davis*,

533 U.S. 678, 701 (2001) (government must rebut with actual evidence once petitioner shows removal not reasonably foreseeable); *see also* Fed. R. Evid. 1002 ("**An original** writing, recording, or photograph **is required** in order to prove its content unless these rules or a federal statute provides otherwise.") (emphasis added).

Moreover, Berchie is providing an affidavit that rebuts and otherwise casts doubt on the speculative claims made by Declarant Pyrd in his statement. *See* Berchie Decl. (Sept. 8, 2025). Berchie swears under penalty of perjury that he still has not been interviewed by the Ghanian embassy for purposes of confirming his identity, which casts serious doubt on ICE's claims to have a usable travel document Respondent. These concerns are buttressed by the fact that even Pyrd does not seem to have laid eyes on a travel document. How do we know the document is signed or otherwise properly executed? How do we know that the travel document is actually for Berchie? How do we know the document is authentic? Where is the best evidence of the travel document? Why are we supposed to blindly trust hearsay? Moreover, even assuming there is a valid travel document, how do we know Ghana will honor that document in the absence of a personal interview with Berchie to confirm his identity?

III. The Report and Recommendation Already Determined Detention Unlawful.

The Magistrate Judge has recommended granting the petition because ICE violated binding regulations in revoking Petitioner's release. ECF No. 12. The R&R correctly held that ICE failed to show "changed circumstances" or a "significant likelihood of removal in the reasonably foreseeable future," as required by 8 C.F.R. § 241.13(i). The government's

motion does not undermine that conclusion. At most, it demonstrates ICE's post hoc attempt to paper over its unlawful conduct. A belated claim of a travel document cannot retroactively cure regulatory violations. *See Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (ICE must justify detention with evidence of changed circumstances at the time of redetention, not afterward).

Tangentially, one wonders whether Respondents would have filed the motion to extend the time to file objections if they were able to currently demonstrate that removal is significantly likely to occur in the reasonable foreseeable future. If Respondents currently possessed such evidence, it is likely they would simply file that evidence with objections to the R&R on or before September 10, 2025 and thereby moot out the habeas petition. Respondents' contrary actions in seeking an extension of time is essentially an admission that they cannot presently remove Petitioner, meaning 1) he was taken into custody prematurely in the absence of changed circumstances and 2) circumstances still have not changed to a sufficient degree to transmute Petitioner's unlawful detention into lawful detention.

IV. Delay Would Prejudice Petitioner by Prolonging Unlawful Detention.

Even if Ghana eventually issues a travel document, further steps—including embassy interviews and logistical arrangements—remain uncertain. *See* Berchie Decl.

The claim of "imminent removal" is the same speculative rationale courts have rejected for decades. *See Zadvydas*, 533 U.S. at 701 (what counts as "reasonably foreseeable" shrinks as detention lengthens). Here, Petitioner has already spent years in ICE custody without removal. To extend briefing deadlines now would allow ICE to

prolong his unlawful incarceration in the hope that removal *might* happen soon. Habeas exists precisely to prevent such gamesmanship.

V. Judicial Economy Favors Immediate Resolution, Not Delay.

The government argues that litigating objections will waste resources because removal might moot the case. ECF No. 14. This turns habeas law upside down. It is not Petitioner's burden to wait in jail until the government can prove mootness. Courts reject such "wait-and-see" tactics. *See Demore v. Kim*, 538 U.S. 510, 532 (2003) (due process requires timely judicial review of detention). Judicial economy is served by affirming the R&R now and ordering release, not by rewarding the government's regulatory violations with more time.

VI. Rearrest.

Respondents' counsel suggests that if the Court orders Petitioner's release, ICE will "promptly re-arrest him." ECF No. 14 at 4. There is no statement from any fact witness stating as much, and statements of counsel are not evidence. Rearrest is certainly a possibility, but that possibility does not justify indefinite detention. ICE is always free to change its mind and the positions it claims to adopt through counsel in the absence of an affidavit are not set in stone.

In light of Respondents' implied threat to rearrest Petitioner immediately upon his release, the injunctive relief the magistrate declined to recommend now appears warranted, at least until Respondents have **adequately** demonstrated: (1) they have a valid and authentic travel document for Petitioner; and (2) Petitioner will be removed within one-to-two days of being redetained. *Zadvydas*, 533 U.S. at 701 (what counts as "reasonably

foreseeable" shrinks as detention lengthens); ECF No. 1 at ¶ 43 (more than 300 days of post-final-order custody).

CONCLUSION

The government has not shown good cause for delay. It has offered no actual travel document, no competent evidence of imminent removal, and no justification for prolonging Petitioner's unlawful confinement. Because habeas corpus is meant to secure *immediate* relief from unlawful detention, this Court should deny the motion to extend time and adopt the Report and Recommendation ordering Petitioner's release.

DATED: September 8, 2025

Respectfully submitted,

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