

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'  
PARTIAL OBJECTIONS TO THE  
REPORT & RECOMMENDATION**

Respondents Pamela Bondi, Kristi Noem, Todd M. Lyons, Marcos Carlos, Sam Olson, U.S. Immigration and Customs Enforcement (“ICE”), and the Department of Homeland Security partially object to the Report & Recommendation (“R&R”) entered in this case. Dkt. 12. The Court should adopt the recommendation that Berchie’s motion for a temporary restraining order be denied. But the R&R incorrectly concluded that “ICE has not followed its own regulations” with regard to re-detaining Berchie on August 7, 2025, and incorrectly recommended that “Berchie’s petition for writ of habeas corpus be granted, and he be released subject to the conditions of his previous order of supervision.” The Court should not adopt either portion of the R&R, for the reasons Respondents provided in their initial response. Dkt. 8.

All that said, there is a more fundamental reason to reject the R&R in its entirety. Berchie is no longer detained pursuant to the Notice of Revocation of Release about which his petition complained. A few days ago, he was served with a *new* notice that provided a *new* explanation of the changed circumstances supporting his re-detention: Ghana recently issued a travel document, and Berchie is scheduled to return to Ghana by the end of

September. Whatever concerns the R&R had with ICE's initial notice are now moot. And because the R&R expressly refused to consider the *Zadvydas*/Due Process issues in this case, *see* Dkt. 12, at 4, the recommendation to grant Berchie's petition is a nullity. Thus, Respondents request that the Court deny Berchie's petition outright because he is not entitled to habeas relief. In the alternative, the petition should be returned to the magistrate judge for further proceedings to address the parties' *Zadvydas* arguments.

### **BACKGROUND**

For the sake of brevity, Respondents will not repeat all the background facts recited in their response. *See* Dkt. 8, at 2-4. What matters is that Berchie is a citizen of Ghana who overstayed his student visa, pled guilty to Fourth Degree Criminal Sexual Contact in Minnesota state court, and was ordered removed from the United States in March 2021. Dkt. 9, ¶¶ 4-6, 10. He was detained after the order of removal and released on an order of supervision in January 2022. Dkt. 9, ¶ 12. ICE re-detained Berchie in August 2025 after determining that his removal to Ghana was likely to occur in the foreseeable future. Dkt. 9, ¶ 13. That re-detention led to Berchie's current habeas action.

The R&R took issue with the written notice that ICE gave Berchie when re-detaining him in August 2025. In short, the R&R doubted whether ICE considered certain regulatory factors before serving the notice, and the R&R determined that ICE's mere request for a travel document could not qualify as a "changed circumstance" that supported re-detaining Berchie. Dkt. 12, at 7-8. But the R&R recommended against enjoining ICE from re-detaining Berchie in the future because the agency would likely be able to cure these issues. Dkt. 12, at 9.

That’s what happened. On September 4, 2025, Ghana issued Berchie a travel document.<sup>1</sup> *See* Declaration of Christopher A. Campbell (“Campbell Decl.”), ¶ 8. With the travel document in-hand, ICE scheduled Berchie’s removal from the United States—he is set to return to Ghana toward the end of the month. Campbell Decl. ¶ 9. Based on these developments, a Deportation Officer served Berchie with a new Notice of Revocation of Release on September 11, 2025. Campbell Decl. ¶ 10. The notice explained in detail the changed circumstances that supported Berchie’s re-detention:

On May 28, 2021, you were ordered removed to Ghana by an authorized U.S. DHS/DOJ official and you are subject to an administratively final order of removal. On January 31, 2022, ICE released you from custody on an Order of Supervision because a travel document for your removal to Ghana could not be obtained at that time. However, in the time since the Embassy of Ghana has issued a travel document on your behalf, and ICE has scheduled your removal to Ghana in September of this year. Due to this change in circumstances, ICE will pursue new efforts to remove you to Ghana.

Campbell Decl. ¶ 10, Ex. A, at 1.

After delivering the new notice to Berchie, the Deportation Officer conducted an interview to give him the opportunity to respond to the information in the notice. Campbell Decl. ¶ 10; *see also* 8 C.F.R. § 241.13(i)(3). Berchie complained that ICE did not have a travel document at the time of his initial arrest in August 2025, noted that he never had an

---

<sup>1</sup> Berchie has made much ado over Respondents’ refusal to file the travel document itself, invoking the best-evidence rule. *See* Dkt. 17, at 3-4. He misses the point. One “changed circumstance” that supports Berchie’s re-detention is the *issuance* of the travel document, not its contents. One reason there is a significant likelihood of removal in the foreseeable future is that Ghana *issued* a travel authorization, not that Ghana typed specific words into the authorization. Respondents have now provided two sworn declarations from federal law enforcement officers verifying the document’s existence and validity. Filing the travel document—even under seal—would unnecessarily disclose sensitive information to Berchie and his attorney. Respondents have presented sufficient evidence that the travel authorization was issued and is currently valid.

interview with the Ghanaian Embassy,<sup>2</sup> and asked to see the travel document itself. Campbell Decl. ¶ 10, Ex. B, at 1. None of those points confronted the fact that Berchie is scheduled to return to Ghana in a matter of days, and none of them dissuaded ICE from concluding that the changed circumstances listed in the new notice demonstrated a significant likelihood of removal in the foreseeable future. Campbell Decl. ¶¶ 10-11. Accordingly, Berchie was served with a new warrant of arrest and will be detained until he is removed from the country. Campbell Decl. ¶ 10, Ex. C.

### ARGUMENT

Berchie is not entitled to habeas relief. The R&R's conclusion to the contrary was based on procedural concerns that are no longer present in this case. As things stand, Berchie's re-detention is lawful because he is going to be removed from the United States imminently. The Court should deny Berchie's petition in its entirety and deny his request for a temporary restraining order.

#### **I. The R&R**

Respondents object to the R&R's conclusion that ICE failed to follow its own regulations when re-detaining Berchie in August 2025 and that he is therefore entitled to habeas relief. Neither conclusion matters anymore given the significant developments discussed above. But to preserve their arguments for any appeal, Respondents respectfully request de novo review of the R&R for three reasons.

---

<sup>2</sup> Berchie had his facts wrong: he attended a nationality verification interview with the Embassy of Ghana on July 8, 2021. Campbell Decl. ¶ 5.

*First*, ICE and the Department of Homeland Security are not proper parties to this case. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). Respondents raised this issue in their response, Dkt. 8, at 5 n.2, yet the R&R did not address it or make any recommendation as to dismissing the agencies. Regardless of how the Court resolves these objections or Berchie’s petition generally, the agencies must be dismissed as parties to this case.

*Second*, the R&R improperly addressed only a standalone question: whether ICE considered certain regulatory factors and explained “changed circumstances” in a written notice issued to Berchie. Those agency actions arose out of ICE’s efforts to execute Berchie’s removal order. And Congress has stripped federal courts of “jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to . . . execute removal orders against any alien under this Act.” 8 U.S.C. § 1252(g). The R&R disregarded this jurisdictional bar by analyzing whether the document that facilitated Berchie’s re-detention complied with ICE regulations.

To be clear, the Supreme Court has held that jurisdiction exists to review whether a non-citizen’s *detention* is so attenuated from his removal that it is unconstitutional. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). That is a *Zadvydas* claim, and Berchie raised one in this case apart from his procedural challenge to the August 2025 notice. But the whole point of *Zadvydas* is that detention no longer “arises from” the execution of a removal order—and is no longer subject to the jurisdictional bar in § 1252(g)—when there is no significant likelihood of removal in the foreseeable future. There is a critical distinction between asking if ICE considered regulatory factors when making a detention decision and asking if a non-citizen’s detention is no longer connected to the execution of a removal

order. Section 1252(g) precludes courts from answering the first question, at least in the free-standing manner that the R&R used here. *See Silva v. United States*, 866 F.3d 938, 940 (8th Cir. 2017) (Section 1252(g) “makes no distinction between discretionary and nondiscretionary decisions. So long as the claim arises from a decision to execute a removal order, there is no jurisdiction.”). This Court lacks jurisdiction to grant habeas relief that is based only on ICE’s non-compliance with its regulations when re-detaining a non-citizen.<sup>3</sup> The R&R’s recommendation improperly dodged the constitutional question of whether Berchie’s detention is lawful given the evidence showing a significant likelihood of his removal in the foreseeable future.

*Thid*, the R&R read requirements into § 241.13(i) that do not exist and then faulted ICE for failing to comply with those requirements. For example, the R&R acknowledged that the notice issued in August 2025 advised Berchie of: (1) changed circumstances; (2) ICE’s determination that he could be expeditiously removed; and (3) ICE’s pursuit of a travel document from the Ghanian government. Dkt. 12, at 7. That is all the regulation requires: “the alien will be *notified* of the reasons for revocation of his or her release.” 8 C.F.R. § 241.13(i)(3) (emphasis added). Although the regulation states that re-detention is appropriate after ICE “determines that there is a significant likelihood that the alien may

---

<sup>3</sup> Respondents acknowledge that some judges in this District have analyzed ICE’s compliance with 8 C.F.R. § 241.13(i) and concluded that habeas relief is warranted if the agency did not follow the regulation. Respondents respectfully disagree with these decisions and preserve their jurisdictional argument for appeal. Furthermore, if what Berchie truly wants is APA-style review of ICE’s decisions and written notices in this case, then he needs to file an APA action instead of shoehorning his “arbitrary and capricious” arguments into a habeas petition. *See* Pet. ¶¶ 99-104.

be removed in the reasonably foreseeable future,” *id.* § 241.13(i)(2), there is simply no requirement that ICE must explain its determination in a written notice. Nor is there a requirement that the notice be sufficient to “inform the Court” of ICE’s determination after-the-fact, as the R&R suggested. Dkt. 12, at 7. Finally, there no requirement that ICE must set out in writing its consideration of the factors listed in § 241.13(f). Dkt. 12, at 7.

\* \* \*

The R&R’s observations about the August 2025 notice are no longer a sufficient basis upon which to grant Berchie’s habeas petition. Even if circumstances had not materially changed since the R&R was issued, the Court should reject the portions concluding that ICE did not follow its regulations in re-detaining Berchie.

## **II. Berchie’s Petition**

The Court should deny Berchie’s habeas petition. His procedural challenge to ICE’s re-detention decision fails in light of the new Notice of Revocation of Release. And his *Zadvydas* claim fails in light of the recently issued travel document and his now-scheduled removal from the country.

### **A. Procedural Challenge**

Starting with Berchie’s procedural challenge, he complained that ICE did not comply with § 241.13(i) when re-detaining him in August 2025. Pet. ¶¶ 91-92, 101-02; Dkt. 10, at 6-7. Any similar criticism of the September 2025 notice would lack merit. The notice set forth Berchie’s immigration history and explained that Berchie was released in January 2022 “because a travel document for [his] removal to Ghana could not be obtained at that time.” Campbell Decl. Ex. A, at 1. Then the notice described two key events: Ghana

recently issued Berchie a travel document, and ICE recently scheduled his removal for the end of September. Campbell Decl. Ex. A, at 1. Those are “changed circumstances” that support revoking Berchie’s release under § 241.13(i)(2). The paragraph describing those changed circumstances adequately notified Berchie of “the reasons for revocation of his” release, which is all that § 241.13(i)(3) requires.

After receiving the new notice, Berchie participated in an informal interview. Campbell Decl. ¶ 10, Ex. B. Consistent with § 241.13(i)(3), the purpose of the interview was “to afford [him] an opportunity to respond to the reasons for revocation of his . . . order of supervision stated in the notification letter.” Campbell Decl. Ex. B, at 1. Based on the changed circumstances described in the notice and Berchie’s statements at the interview, ICE determined “there is a significant likelihood that Berchie will be removed in the reasonably foreseeable future.” Campbell Decl. ¶ 11. That is the exact determination ICE was required to make under § 241.13(i)(2) when re-detaining Berchie. He may not agree with the agency’s decision, but Berchie cannot dispute that he was afforded the procedures set out in ICE’s regulations.

Berchie also cannot be surprised with this outcome. Respondents already explained that he “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.” Dkt. 8, at 13. The R&R did not acknowledge the point, so Respondents repeated it when asking to extend the deadline for these objections. Dkt. 14, at 4. Berchie shrugged off the possibility of a new notice, but he failed to confront the fact that release was not the appropriate remedy.

Dkt. 17, at 6-7. Because ICE's September 2025 notice complies with the regulations, the Court should reject Berchie's pursuit of habeas relief on procedural grounds.

**B. *Zadvydas* Challenge**

That leaves Berchie's *Zadvydas* challenge, which was always going to fail for the reasons Respondents explained in their initial response. But Ghana's recent issuance of a travel document, and ICE's recent scheduling of Berchie's removal, only further cement that conclusion. In fact, this Court's analysis should begin and end with Berchie's own reply brief—he flatly admits that “detention becomes lawful the moment the travel document is obtained.” Dkt. 10, at 11. Respondents agree. The Court should deny Berchie's habeas petition because ICE has a travel document for Berchie and is lawfully detaining him pending imminent removal from the United States.

The R&R refused to address *Zadvydas*, making it impossible for Respondents to provide “specific” objections as required under Local Rule 72.2. Respondents therefore request de novo review of their prior arguments, including:

- Berchie has not yet been detained for six months, and he cannot “combine” periods of detention to get over *Zadvydas*'s six-month mark.
- Berchie did not satisfy *Zadvydas*'s threshold requirement to “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701.
- Respondents rebutted any suggestion that Berchie's removal was not likely to occur in the foreseeable future because Ghana has a history of issuing travel documents and accepting its citizens for removal.

Dkt. 8, at 13-19. Standing alone, any one of these reasons would have been sufficient to deny Berchie's habeas petition.

Now that ICE has obtained a travel document and scheduled Berchie's removal, there is simply no longer any dispute that his detention serves a clear purpose by "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699; *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."). As noted above, Berchie already conceded that his detention became lawful once ICE obtained a travel document. The Court should hold him to that concession.

Based on the entire record—including the supplemental information provided with these objections—Respondents have demonstrated a significant likelihood of removing Berchie in the reasonably foreseeable future. Thus, Berchie's *Zadvydas* claim fails.

### CONCLUSION

The R&R correctly concluded that Berchie is not entitled to injunctive relief, and the Court should adopt that conclusion. But the Court should reject the R&R's observations about ICE's decision to re-detain Berchie in August 2025. Respondents respectfully suggest that the R&R over-stepped the limits Congress placed on judicial review of immigration-related detention and misconstrued ICE's governing regulations. Regardless, the subsequent developments described above have rendered the R&R's observations moot. As to what remains of Berchie's habeas claims, the evidence confirms that his re-detention is lawful. The Court should therefore deny Berchie's petition in its entirety.

*[signature page follows]*

Dated: September 17, 2025

JOSEPH H. THOMPSON  
Acting United States Attorney

*s/ Trevor Brown*

BY: TREVOR C. BROWN  
Assistant United States Attorney  
Attorney ID Number 396820  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
(612) 664-5600  
trevor.brown@usdoj.gov