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 RESPONSE TO RESPONDENTS' OBJECTIONS TO THE REPORT AND RECOMMENDATION

EXPEDITED HANDLING REQUESTED

ARGUMENT

Respondents object to the magistrate's report and recommendation. ECF No. 20. Respondents reincorporate their prior arguments by reference, which have already been sufficiently rebutted. Respondents add that "a more fundamental reason to reject the R&R in its entirety" now exists. *Id.* at 1. Respondents claim that

> 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.

Id. at 1-2.

By issuing a new Notice after circumstances allegedly changed months after Petitioner was detained in relation to the first Notice, Respondents essentially admit that the first Notice was legally deficient and that Petitioner's detention has been unlawful. To the extent Respondents suggest that the new Notice transmutes the prior unlawful detention into new lawful detention, Respondents are mistaken. If Respondents could change the basis for § 1231 detention by simply issuing a series of new slightly altered Notices, and thereby defeat habeas jurisdiction and review, habeas corpus would become a nullity because the government could simply make a habit of issuing a new slightly amended Notice after a habeas petition has been fully briefed.

Additionally, it remains true that Respondents have not met their burden under *Zadvydas* or 8 C.F.R. § 241.13(i) to provide credible and probative evidence that Respondents are significantly likely to affect Petitioner's removal by the end of September, as they claim. *See Campbell Decl.*, ECF No. 21, ¶ 9 ("BERCHIE is currently scheduled for removal to Ghana at the end of September"). Although Respondents claim to have a travel document, they have not attached it as an exhibit. *See* ECF No. 21; *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). Blind reliance on Respondents' say-so would not only contravene the Federal Rules of Evidence, it would reward precisely the kind of selective disclosure that habeas review is designed to prevent. ICE chose to file multiple exhibits but withheld the single piece of evidence that supposedly resolves the case. That omission speaks louder than their assurances. At absolute minimum, the Court must order Respondents to submit a copy of the travel document to the Court for ex parte in camera review to ensure it appears valid, properly relates to Petitioner, and otherwise has all the hallmarks of genuineness and effectiveness. Moreover, even if this exercise is performed and the Court determines that the travel document appears valid and effective, the Court must also order the government to effect the removal by a date certain no later than September 30, 2025, and to release Petitioner by that date if removal has not been effected.

At a more fundamental level, Respondents' evidence submitted in support of prompt removal is untrustworthy and lacking in credibility or probity. For example, Campbell stated in paragraph 10 of his declaration that, "[a]ttached as **Exhibit B** is a true and correct copy of the notes from BERCHIE's informal interview." ECF No. 21, ¶ 10. However, the document stamped as Exhibit B has nothing to do with Berchie. It is instead a document relating to a different immigrant with a different alien registration number, and this document should be stricken from the record or at least sealed permanently.[1] *See* ECF No. 21-2 (relating to Roosevelt Bartu, Jr.). This is not a stray error—it is part of a pattern of misstatements and defective filings that strip Respondents' submissions of any

[1] A motion to seal and/or strike is filed concurrently.

presumption of reliability. When the government repeatedly files the wrong documents, misidentifies the detainee, and submits warrants citing proceedings that do not exist, the Court is entitled—indeed obliged—to apply the most exacting scrutiny.

Similarly, Campbell stated in the same declaration that he "also served BERCHIE with a new Warrant for Arrest of Alien. A true and correct copy of the Warrant I served on BERCHIE is attached as **Exhibit C**." ECF No. 21, ¶ 10. However, the warrant of arrest indicates that "there is probable cause to believe that Berchie … is removable from the United States. This determination is based upon: … the **pendency of ongoing removal proceedings** against the subject." *See* ECF No. 21-3 (emphasis added). It is undisputed that no ongoing removal proceedings exist or are pending against Berchie. The arrest warrant itself also seems to imply that Berchie is being detained under INA § 236, 8 U.S.C. § 1226 instead of under INA § 241, 8 U.S.C. § 1231. *See id.* The document is thus facially incorrect for multiple reasons, detracting from the credibility of Respondents and their agents.

Adding to these concerns is the attached declaration from Berchie. *See Berchie Decl. (Sept. 17, 2025)*. Berchie's new declaration details his last conversation with ICE officers about the travel document. *Id.*, ¶¶ 2-5. Berchie explains that when he asked to see the travel document, the ICE agent initially told him that they could do so. *Id.*, ¶ 2. After a few hours of no travel document materializing, Berchie was told by the ICE officer that they are not allowed to show him the travel document. *Id.* When Berchie was being transported back to the jail, ICE officers kept referring to Berchie as "Marties Berchie" rather than "Martin Berchie," indicating a significant possibility that the travel document

Respondents claim is for the wrong individual, and instead relates to an unknown individual named "Marties Berchie." *Id.*, ¶¶ 3-5. Berchie, recognizing this oddity, told the ICE officer his name was Martin Berchie, not Marties Berchie. *Id.*, ¶ 3. The ICE officer then began arguing with Berchie about his name, claiming that Berchie must have changed his name at some point, further indicating that the travel document is for the wrong individual. *Id.* Taken together, these serial notices, withheld documents, and repeated factual errors paint a clear picture: Respondents cannot carry their burden to prove that removal is significantly likely in the reasonably foreseeable future.

Lastly, to the extent Respondents suggest the Court should remand proceedings to the magistrate for further analysis of *Zadvydas*, Petitioner demurs. This Court has extraordinary expertise and experience in habeas corpus matters, and the Court is certainly capable of determining the constitutional *Zadvydas* and due process issues in the first instance without the benefit of a new R&R. Petitioner has continuously requested expedited processing under 28 U.S.C. § 1657 in this matter and has established good cause for making that request, and has also filed emergency motions for preliminary injunctive relief with concurrent requests for expedited processing. The expedite statute, 28 U.S.C. § 1657, is couched in mandatory terms, using "shall" rather than "should" or "may." This compulsory language supports concluding that any new constitutional analysis that needs to be performed must be performed by the district court rather than the magistrate. Moreover, because habeas is itself an emergency remedy for ongoing unlawful detention, additional delay compounds the injury, which also supports Petitioner's request to avoid further review by the magistrate should further review be deemed necessary.

CONCLUSION

Respondents' shifting stories, defective paperwork, and refusal to produce critical evidence confirm what this Court already knows: Petitioner's detention is unlawful. The R&R must be affirmed, and Berchie must be immediately released.

DATED: September 18, 2025

Respectfully submitted,

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