UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Roosevelt Bartu, Jr.,

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-3198

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 Roosevelt Bartu, Jr. has filed a petition seeking a Writ of Habeas Corpus under 28 U.S.C. § 2241. *See* ECF No. 1. Bartu 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 sq. 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. 1-2,

Exhibit B, *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. 1-2, 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, Roosevelt Bartu, Jr., is a victim of the present government's animus against immigrants and of otherwise punitive conditions at Sherburne County Jail. His detention lacks legitimacy because it is intended to be punitive. His detention lacks legitimacy because its effect is punishment. His detention lacks legitimacy because it is occurring in violation of law. Mr. Bartu requires a writ of habeas corpus.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Bartu incorporates by reference ¶¶ 1-28, 50-57, 59-61 of his Verified Petition for Writ of Habeas Corpus. *See* ECF No. 1, ¶¶ 1-28, 50-57, 59-61; *see also* ECF No. 1-1, Exhibit A; ECF No. 1-2, Exhibit B; ECF No. 1 at 25 (declaring under penalty of perjury that the factual statements made in the Verified Petition are true to the best of Bartu's knowledge and belief).

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 June 19, 2018, "[t]he date the order of removal [became] administratively final." 8 U.S.C. § 1231(a)(1)(B)(i); ECF No. 1, ¶¶ 2-7, 9.

The "removal period" is "90 days." 8 U.S.C. § 1231(a)(1)(A). Petitioner's removal period therefore elapsed on September 16, 2019. Nonetheless, Petitioner was not released on an OOS until October 21, 2019, a period of 400 days (444.44% 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 on June 19, 2018, Petitioner has been detained in ICE custody for 490 days as of August 11, 2025. *See* ECF No. 1, ¶ 61 (520 days post-removal-order means 30 days for the removal order to become administratively final plus the 90-day removal period plus 400 days of confinement after the removal period elapsed, or 490 days after his order became administratively final).

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.

Bartu's removal period has elapsed. Bartu "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." There is no legitimate reason to believe Bartu is a danger or flight risk if released. *See* 8 C.F.R. § 241.4(e).

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 482 days as of the date of this memorandum's submission. 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.

II. 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 period of confinement also constitutes punishment or is otherwise punitive in intention or effect. Petitioner's substantial liberty interests and the risk of erroneous deprivation of said interests far outweigh the government's interest in continuing to detain Petitioner.

III. 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 detention of Petitioner has become punitive while he has been incarcerated at Sherburne County Jail. He has been required to endure multiple lengthy periods of solitary confinement and other similar punitive restrictions. *E.g.*, ECF No. 1, ¶¶ 3-28; ECF No. 1-1, Exhibit A; *see also* ECF No. 1-2, Exhibit B, *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] Petitioner has endured these periods of confinement, in part, after becoming the victim of a physical assault due to his limited attempt to exercise his fundamental right to self-defense. Petitioner has alleged he has been discriminated against by correctional officers on the basis of race, and treated more harshly than his peers as a result.

Various courts have acknowledged that solitary confinement is punitive. *See, e.g.*, *Porter v. Pennsylvania Dept. of Corrections*, 974 F.3d 431, 438 (3d Cir. 2020) ("Given the scientific consensus on the severe detrimental impacts of prolonged solitary

[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."

confinement, we decided that the plaintiffs' indefinite placements on death row constituted extreme deprivation and that these conditions were atypical in comparison with conditions in the general prison population. We held that the employees of the Pennsylvania Department of Corrections (the 'DOC') had violated the plaintiffs' procedural due process rights by keeping them in solitary confinement after their death sentences were vacated without any individualized determinations that would justify such extreme deprivations."); *see also Duncan v. Kavanagh*, 439 F. Supp. 3d 576, 590 (finding that notwithstanding alleged disciplinary infractions by an ICE inmate while detained, "§ 1226(c) detention is not intended to be punitive"). In *Porter*, the Third Circuit acknowledged that "**[i]t is well established in both case law and scientific and medical research that prolonged solitary confinement, like that experienced by Porter, poses a substantial risk of serious psychological and physical harm:"**

> A comprehensive meta-analysis of the existing literature on solitary confinement within and beyond the criminal justice setting found that **"[t]he empirical record compels an unmistakable conclusion: this experience is psychologically painful, can be traumatic and harmful, and puts many of those who have been subjected to it at risk of long-term ... damage."** Specifically, based on an examination of a representative sample of sensory deprivation studies, the researchers found that **virtually everyone exposed to such conditions is affected in some way. They further explained that "[t]here is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects." And as another researcher elaborated, "all [individuals subjected to solitary confinement] will ... experience a degree of stupor, difficulties with thinking and concentration, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli."**
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> **Anxiety and panic are common side effects. Depression, post-traumatic stress disorder, psychosis, hallucinations, paranoia, claustrophobia, and suicidal ideation are also frequent results.** Additional studies

> included in the aforementioned meta-analysis further "underscored the importance of social contact for the creation and maintenance of 'self.' " In other words, in the absence of interaction with others, an individual's very identity is at risk of disintegration.
>
> ...
>
> **As if psychological damage was not enough, the impact of the deprivation does not always stop there. Physical harm can also result. Studies have documented high rates of suicide and self-mutilation amongst inmates who have been subjected to solitary confinement. These behaviors are believed to be maladaptive mechanisms for dealing with the psychological suffering that comes from isolation. In addition, the lack of opportunity for free movement is associated with more general physical deterioration.** The constellations of symptoms include dangerous weight loss, hypertension, and heart abnormalities, as well as the aggravation of pre-existing medical problems.

Porter, 974 F.3d at 441-42 (emphasis added) (quoting *Williams v. Sec'y Pennsylvania Dept. of Corrections*, 848 F.3d 549, 556-68 (3d Cir. 2017)).

Additionally, the Eighth Circuit has previously accepted an inmate's allegation that solitary confinement constitutes "[p]unitive isolation." *See Ervin v. Ciccone*, 557 F.2de 1260, 1262 (8th Cir. 1977) (ultimately holding that solitary confinement, in the petitioner's case, did not rise to the level of cruel and unusual punishment but accepting that it constituted punishment). In another context closer to Bartu's circumstances, the Eighth Circuit found that a "plaintiff's confinement as a punitive measure, in isolation, without adequate clothing or bedding fully supports its conclusion that an Eighth Amendment violation was established." *Maxwell v. Mason*, 668 F.2d 361, 363 (8th Cir. 1981); *see also* ECF No. 1-1, Exhibit A (complaining of being placed in a solitary cell as punishment with no toilet or sink and with a mattress with no sheet and one blanket that requires him to sleep on the ground); ECF No. 1, ¶ 23; *Finney v. Arkansas Bd. of*

Correction, 505 F.2d 194, 207 (8th Cir. 1974) ("In the punitive wing, we note the prisoners are denied the regular prison diet. 'Grue' is the term applied to the tasteless, unappetizing paste-like food which is served to prisoners in solitary confinement as a form of further punishment."); *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1079 (N.D. Cal. May 2, 2024) ("people detained under civil rather than criminal process are entitled to more considerate treatment than ... criminally detained counterparts.") (citation and internal quotations omitted); *Becerra*, 732 F. Supp. 3d at 1079-80 ("People civilly detained pending a commitment adjudication also cannot be subjected to conditions that are worse than they would face if committed, conditions that themselves cannot be worse than the conditions of detention imposed as punishment for a criminal conviction. In other words, 'purgatory cannot be worse than hell.'") (citation omitted).

If conditions of civil confinement are equivalent to or more restrictive than criminal detention or civil post-commitment detention, they are presumptively punitive and the burden shifts to the government "to show (1) legitimate, non-punitive interests justifying the conditions of the detainee's confinement and (2) that the restrictions imposed are not excessive in relation to these interests." *King v. Cnty. of L.A.*, 885 F.3d 548, 557 (9th Cir. 2018) (cleaned up) (citing *Jones*, 393 F.3d at 933). Here, Petitioner has alleged that his conditions at Sherburne County Jail are worse than the conditions he experienced while serving a criminal prison sentence in the Minnesota Department of Corrections. ECF No. 1, ¶¶ 16-27. Purgatory has become worse than hell, meaning Bartu must be released.

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 at the same jail or similarly situated county jails, further demonstrating that Petitioner's detention is punitive.

IV. 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 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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