UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-03198-PJS-DTS

ROOSEVELT BARTU, JR.,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

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

INTRODUCTION

Federal Respondents[1] respectfully submit this combined response to the Verified Petition for Writ of Habeas Corpus, *see* ECF No. 1 ("Petition"), and motion for a temporary restraining order, *see* ECF. Nos. 2, 3 ("TRO Motion"), brought by Petitioner Roosevelt Bartu Junior ("Petitioner"). Both should be denied. As a noncitizen[2] convicted of an aggravated felony crime of violence, *see* 8 U.S.C. § 1227(a)(2)(A)(iii), Petitioner is statutorily subject to mandatory detention during his removal proceedings. *See* 8 U.S.C. § 1226(c). Recent Eighth Circuit precedent makes clear that mandatory immigration detention under 8 U.S.C § 1226(c) for the duration of those proceedings does not violate the Constitution or laws of the United States. *Banyee v. Garland*, 115 F.4th 928, 931 (8th

[1] Pursuant to Federal Rule of Civil Procedure 25(d), acting Field Office Director Sam Olson is automatically substituted for Mr. Berg. *See* Fed. R. Civ. P. 25(d). Petitioner also names Pamela Bondi, Kristi Noem, Todd M. Lyons, Marcos Charles, Immigration and Customs Enforcement ("ICE") and the Department of Homeland Security ("DHS"), who together with Mr. Berg are referred to as the "Federal Respondents." This response is not filed on behalf of non-Federal Respondent Brott.

[2] This brief uses the term "noncitizen" as equivalent to the statutory term "alien." *See Barton v. Barr*, 590 U.S. ___, 140 S. Ct. 1442, 1446 n.2 (2020) (citing 8 U.S.C. § 1101(a)(3)).

Cir. 2024) ("The rule has been clear for decades: '[d]etention during deportation proceedings [i]s . . . constitutionally valid.'").

Petitioner nonetheless seeks "immediate release from detention," Petition ¶ 31, and a long list of other relief, *see id.* at 23-24, under two flawed theories. First, he incorrectly asserts that his detention is governed by 8 U.S.C. § 1231, *see* Petition ¶¶ 36, 62, an argument belied by statute, regulation, and most recently by the Eighth Circuit's August 14, 2025, decision remanding his case to the Board of Immigration Appeals ("BIA") "for further [removal] proceedings . . . ." *See* Declaration of Liles Repp ("Repp Decl." or "Repp Declaration") Exhibit A ("COA Decision"). Second, he argues that his detention "has become punitive," ¶ 16, based on complaints about the conditions of his confinement at the Sherburne County Jail. However, such conditions of confinement claims must be brought in a separate action, not a habeas proceeding, as Petitioner must challenge the fact or duration of his confinement, not its conditions. *See, e.g.*, *Spencer v. Haynes*, 774 F.3d 467, 470 (8th Cir. 2014); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996).

As Petitioner's continued immigration detention complies with the Constitution and the law, the Petition should be denied. Denying the Petition will render the TRO Motion moot, but even were it not moot, the motion should be denied on the merits.

BACKGROUND

Respondents draw the following background from the Petition, the Declaration of John D. Ligon ("Ligon Decl."), and Repp Declaration with accompanying exhibits.[3]

[3] Exhibits to the Repp Declaration will hereafter be referred to merely as "Ex. __."

I. Petitioner's Background and Criminal Activity

Petitioner is a native and citizen of Liberia who entered the United States in December of 2015 as a lawful permanent resident. *See* Ligon Decl. ¶ 4; Petition ¶ 2.

Since arriving in the United States, he has been convicted of multiple crimes, including crimes of violence. First, on September 4, 2018, the Hennepin County District Court in Minneapolis, MN, convicted[4] Petitioner of disorderly conduct and sentenced him to 90 days incarceration. Ligon Decl. ¶ 5.

Next, Petitioner engaged in a violent robbery on August 12, 2020, that was captured on surveillance video. *See* Ex. B at 14. On November 5, 2021, a jury in Hennepin County District Court convicted him of Aggravated Robbery-1st Degree, *see* Repp Decl. Ex. B at 5, and he was later sentenced to 41 months incarceration on January 18, 2022. *Id.* at 3-4; *see* Ligon Decl. ¶ 6. The statement of probable cause from that case reflects that Petitioner encountered his victim walking down Nicollet Mall carrying several bags and beer, then sprinted after him grabbing onto his person and knocking his belongings to the ground. Ex. B at 14. Petitioner stole cans of beer from the victim and then started punching him, repeatedly throwing him to the ground. *Id.* The situation then escalated into physical attacks on the victim by other co-defendants, ultimately culminating in violence that left the victim bleeding, temporarily unconscious, and also missing his wallet containing cash and credit cards. *Id.*

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[4] The Ligon Declaration and Form I-862 seemingly refer to dates of sentencing as dates of conviction. *See, e.g.*, Ligon Decl. ¶¶ 5, 6, 7. As the Immigration Judge noted, that distinction "is not dispositive of whether or no[t] the conviction[s] occurred," Ex. E at 2 FN 2, which is what is relevant to the charges of removability.

Most recently, Petitioner was convicted of domestic assault stemming from an incident that took place on December 30, 2020. *See* Ex. C at 2. The statement of probable cause reflects that Petitioner' assaulted his girlfriend, choking her after they got into an argument and rendering her unable to breathe. *See* Ex. C at 9. He pled guilty to the offense of Domestic Assault-Fear-Misdemeanor in violation of Minn. Stat. §609.2242 Subd, 1(1) and was sentenced to 90 days of incarceration. *See* Ex. C; Ligon Decl. ¶ 7.

II. Petitioner's Removal Proceedings

Petitioner was put in removal proceedings in June of 2023 when ICE officials issued him a Notice to Appear, Form I-862 during his detention with the Minnesota Department of Corrections. *See* Ligon Decl. ¶ 8; Ex. D (Form I-862); Ex. H (Form I-213). They later arrested Petitioner at the Minnesota Correctional Facility in Faribault, MN on December 4, 2023, Ligon Decl. ¶ 9, commencing his present immigration detention.

On February 21, 2024, an Immigration Judge ("IJ") issued a written order directing that charges under INA §§ 237(a)(2)(A)(iii) (aggravated felony at any time after admission), (a)(2)(A)(i) (crime involving moral turpitude), and (a)(2)(E)(i) (crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment), be sustained by clear and convincing evidence. *See* Ex. E.

On April 17, 2024, the IJ ordered Petitioner removed to Liberia and his denied applications for relief. *Id.* ¶ 10; *see* Ex. F ("2024 IJ Order"). However, on April 21, 2024, Petitioner filed a motion to reopen, and on May 17, 2024, he also filed an appeal with the BIA. Ligon Decl. ¶¶ 11, 12. While his appeal with the BIA was still pending, Petitioner filed a Motion to Remand, *id.* ¶ 13, and on October 11, 2024, the BIA issued a written order

granting his motion to remand and remanding the record to the IJ for further proceedings consistent with its opinion.[5] Ex. G at 6 ("2024 BIA Remand"); *see* Ligon Decl. ¶ 14.

On February 3, 2025, the IJ issued new removal order summarizing an oral decision it entered that same day. Ligon Decl. ¶ 15; *see* Ex. I ("2025 IJ Order"). The 2025 IJ Order found Petitioner was removable and ordered him removed to Liberia. Ex. I at 1, 3. It also denied his applications for Asylum, Withholding of Removal under INA § 241(b)(3), withholding under the CAT, and Deferral of Removal under CAT. *Id.* at 2.

On February 11, 2025, Petitioner appealed the 2025 IJ Order to the BIA. Ligon Decl. ¶ 16. His Notice of Appeal shows that he appealed the IJ's February 3, 2025 decision in merits proceedings, *see* Ex. K at 1, and reflects that on appeal Petitioner reserved "all issues," referring to "clearly erroneous findings of fact, errors of law," and abuse of discretion, some of which he did not list in the notice. *Id.* at 2.

On May 23, 2025, the BIA issued an order summarily dismissing Petitioner's appeal. *Id.* ¶ 17. A footnote in the order reflects that it occurred following an April 10, 2025, notice from the BIA Clerk's Office denying Petitioner's counsel's request to accept a late-filed brief and that the BIA declined to consider arguments in a second motion to accept a late-filed brief. *See* Ex. I at 3 FN 1. On that same date, Petitioner also filed a Motion to Reopen and/or Reconsider with the BIA. *Id.* ¶ 17.

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[5] In the Petition, Petitioner states the BIA "affirmed the order of removal," Petition ¶ 7, however the terms of the BIA's actual order reflect remand: "ORDER: The motion to remand is granted, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion." Ex. G at 6.

On May 28, 2025, Petitioner filed a Petition for Review with the Eighth Circuit and moved for a stay of removal. *See* Ligon Decl. ¶¶ 19, 20. On July 3, 2035, the Eighth Circuit granted Petitioner's emergency motion for a stay of removal. *Id.* ¶ 21; *see* Ex. L.

On August 14, 2025, the Court of Appeals granted the petition for review, concluding "that the BIA abused its discretion in denying and declining to consider [Petitioner's] motions to submit a late-filed brief, and summarily dismissing his appeal." COA Order at 4; s*ee id.* at 2 (noting the petition for review was "of dismissal of his appeal by the Board of Immigration Appeals (BIA)."). The COA Order "expresse[d] no view on the merits of the administrative appeal," and "instead . . . "remanded to the BIA for consideration of whether [Petitioner's] motions to accept a late-filed brief warrant a favorable exercise of the BIA's discretion, and for a decision that announces terms sufficient to enable" its review. *Id.* at 6. Thus, following remand Petitioner's Removal Proceedings are now before the BIA once again.

III. The Present Petition and TRO Motion

The instant Petition was filed on August 11, 2025, seeking relief under 28 U.S.C. § 2241, and asserting in substance that 1) Petitioner's detention is prolonged and unreasonable under the Due Process Clause of the Fifth Amendment because, under *Zadvydas v. Davis*, 533 U.S. 678 (2001), he believes there is no significant likelihood of his removal in the reasonably foreseeable future; and 2) his incarceration has become "punitive" due to the conditions of his confinement at Sherburne County Jail. Petitioner also filed the TRO Motion seeking release. The Court ordered a response to the Petition,

see Dkt. 6, and Respondents now timely submit a unified response to the Petition and opposition to the TRO Motion.

ARGUMENT

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

Petitioner seeks relief under 28 U.S.C. § 2241, which affords district courts jurisdiction to hear habeas petitions brought by individuals in federal custody. As the petitioner, he bears the burden of proving that he is in custody in violation of the Constitution or the laws of the United States.

Judicial review of immigration matters, including detention issues, is limited. *See I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over [noncitizens] is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of [noncitizens]." *Fiallo*, 420 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

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, and because public safety is at stake. *See Shaughnessy v.*

United States, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude [noncitizens] 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 . . . .").

The Court's review is therefore limited to the constitutionality of Petitioner's detention, not the merits of removal proceedings before the IJ or BIA. The INA states, "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any [noncitizen] or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e); *see also Demore*, 538 U.S. at 516-17 (finding that § 1226(e) precludes review of the Attorney General's discretionary decisions to detain noncitizens in a particular case).

Nor can Petitioner use the 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).

II. Statutory Framework

The interplay of two statutes governs detention of noncitizens in immigration removal proceedings or subject to a final order of removal: 8 U.S.C. § 1226 governs

detention during immigration removal proceedings, while 8 U.S.C. § 1231 governs detention of noncitizens who have a final order of removal.

Under 8 U.S.C. § 1226(a), DHS has discretion to detain noncitizens while removal proceedings are pending. 8 U.S.C. § 1226(a). However, in certain circumstances, Congress has *mandated* detention during proceedings. *See* 8 U.S.C. § 1226(c). In 1996, Congress determined prior laws had not been effective in ensuring criminal noncitizens were removed, and criminal noncitizens who were not detained during their proceedings posed a danger to the community because they often committed additional crimes prior to removal. *See Demore*, 538 U.S. at 518-20; S. Rep. No. 104-48 (1995). Congress decided that noncitizens who have committed certain serious crimes must be detained, without bond, during removal proceedings. *See* Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, Div. C, § 303(b), 110 Stat. 3009-546 (Sept. 30, 1996). Indeed, "Section 1226(c) mandates detention during removal proceedings for [this] limited class of deportable [noncitizens] . . . ." *Demore*, 538 U.S. at 517-18.

Thus, "§ 1226(c) mandates detention of any [noncitizen] falling within its scope and that detention may end prior to the conclusion of removal proceedings 'only if' the [noncitizen] is released for witness-protection purposes." *Jennings*, 583 U.S. at 305-06; *see* 8 U.S.C. § 1226(c)(2). Even then, release is only permitted if "necessary" for witness protection purposes, and only after the noncitizen "satisfies the Attorney General" that he "will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." *Id.* (quotations of 8 U.S.C. § 1226(c)(2) omitted).

By contrast, detention *after* an administratively final removal order is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt. 241. Under Section 1231, "when an alien is ordered removed," the Secretary of Homeland Security "shall detain the alien" "[d]uring the removal period." 8 U.S.C. § 1231(a)(1)(A), (a)(2).[6] The "removal period" is a period during which DHS takes steps to execute the final removal order. *See Id.* § 1231(a)(1)(A)-(B). It begins on the latest of three dates: (i) the "date the order of removal becomes administratively final"; (ii) "[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 (iii) "[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). Administrative finality is defined in the applicable regulation. *See* 8 C.F.R. § 1241.1.

III. Petitioner is Mandatorily Detained Under § 1226(c), Not § 1231

Petitioner's challenge in this case is to his detention—but not detention under the statute he mistakenly cites throughout his briefing, *see, e.g.,* Petition ¶¶ 30, 81, 100.[7] Petitioner admits that the agency asserts authority to detain him "pursuant to the mandatory

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[6] Although § 1231 and other provisions of the Immigration and Nationality Act refer to the "Attorney General," under the Homeland Security Act of 2002 many of those references are now read to mean the Secretary of Homeland Security. *See Straker v. Jones*, 986 F. Supp. 2d 345, 351 (S.D.N.Y. 2013).

[7] Petitioner also invokes the Administrative Procedure Act. *See* Pet. ¶¶ 102-109. But this is a habeas action and not an APA case, as evidenced by the fact that Petitioner paid only a $5.00 filing fee and did not serve Respondents in accordance with the Federal Rules of Civil Procedure. *See generally* Docket. In this Circuit, Habeas petitioners are limited to challenging the fact or duration of their confinement. *Spencer*, 774 F.3d at 469-71; *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Thus, the Court lacks habeas jurisdiction over Petitioner's improper request for judicial review under the APA.

detention provisions of 8 U.S.C. § 1226(c)," *id.* ¶ 49, but repeatedly claims—without explanation—that his detention falls under 8 U.S.C. § 1231, *see e.g.*, Petition ¶¶ 36, 62, going so far as to seek declaratory judgment on the issue, *id.* ¶ 83, and to claim that Respondents have not complied with its provisions. *Id.* ¶¶ 88, 89. Petitioner leaves the Court and Federal Respondents to speculate as to the basis for his assertions, *see generally* Petition, offering only a single statement in the Petition that could be read to support them: "The Board affirmed the order of removal on October 11, 2024, making *that portion of the decision* administratively final and thereby triggering the 'removal period' defined by 8 U.S.C. § 1231(a)(1)(B)(i)." *Id.* ¶ 7.

Petitioner's reading—that individual pieces of an IJ's order can be split and separately rendered administratively final despite ongoing removal proceedings—is belied by statute, regulation, and precedent. First, § 1231(a)(1)(B) states that "the removal period begins on the latest of," *inter alia*, "(i) The date the order of removal becomes administratively final. (ii) If 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. . . ." 8 U.S.C. § 1231(a)(1)(B). Thus, by the statue's plain terms, administrative finality concerns the entire "order of removal," *id.*, not a "portion of [a] decision," as Petitioner suggests. Petition ¶ 7. Moreover, while the 2024 BIA Remand mentioned affirming the IJ's conclusions of removability,[8] it did not affirm the 2024 IJ Removal Order; instead, it

[8] Petitioner offers no support for his assertion that a conclusion in a remand order renders a portion of the IJ's order administratively final, and he should not be permitted to offer new arguments first time on reply. However, Federal Respondents note that recent Supreme Court cases would not buttress any such argument. For example, in *Riley v. Bondi*,

explicitly ordered that Petitioner's motion to remand to that IJ be granted. *See* October 2024 BIA Remand at 4 ("the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion").

Federal Respondents' reading is confirmed by the applicable regulation, 8 C.F.R. § 1241.1 "Final order of removal," which provides that "[a]n order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final," *inter alia*, "(a) [u]pon dismissal of an appeal by the Board of Immigration Appeals; (b) [u]pon waiver of appeal by the respondent; (c) [u]pon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time . . . ." 8 C.F.R. § 1241.1. Petitioner's assertion that a piece of an IJ order (*i.e.*, the conclusion regarding removability) independently became "final" before the rest also contradicts the

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145 S. Ct. 2190, 2198 (2025), the Court concluded that an "order denying relief under the CAT is not a final order of removal and does not affect the validity of a previously issued order of removal or render that order non-final." *Id.* at 2199. Unlike here, it was considering withholding-only proceedings—not removal proceedings, *see id.* at 2196, and a separate Final Order of Removal ("FARO") was already in place, a distinction the Court relied on. *See id.* at 2198 ("Because an alien in streamlined removal proceedings cannot seek review of his FARO before an IJ *or* the BIA, . . . that the order becomes final immediately upon issuance"). That same distinction underscored a decision in *Johnson v. Guzman Chavez*, 594 U.S. 523, 539, (2021) ("[R]emoval orders and withholding-only proceedings address two distinct questions. As a result, they end in two separate orders, and the finality of the order of removal does not depend in any way on the outcome of the withholding-only proceedings."). In *Nasrallah v. Barr*, the Court considered the "narrow question" of "whether, in a case involving a noncitizen who committed a crime specified in §1252(a)(2)(C), the court of appeals should review the noncitizen's factual challenges to the CAT order (i) not at all or (ii) deferentially," 590 U.S. 573, 576 (2020), finding that "a CAT order . . . does not merge into the final order of removal for purposes of §§1252(a)(2)(C)-(D)'s limitation on the scope of judicial review. 590 U.S. 573 at 583. That finding cannot be read to impact Petitioner's removal order in this case, as there unlike here, while the BIA had "vacated the [IJ's] order granting CAT relief" it had also explicitly "*ordered Nasrallah removed* to Lebanon," *id.* at 577 (emphasis added).

plain language of § 1241.1, which (like the statute) refers to a singular order "by the immigration judge"—not a subsidiary conclusion, and also states that, when appealed, the removal order becomes final "[u]pon dismissal of [the] appeal by the Board of Immigration Appeals," not upon remand, *id.*, as occurred in 2024. *See* October 2024 BIA Remand at 4 (remanding; "expressing no opinion as to the ultimate outcome of these proceedings").

Petitioner's reading also ignores key subsequent events—the later 2025 IJ Removal Order following remand, a second BIA appeal, the BIA's dismissal of that appeal, Petitioner's petition for review of the BIA's dismissal order, its stay of removal, and most recently, the Eighth Circuit's August 14, 2025, order remanding to the BIA for further proceedings—overlooking how the statute and regulation bear on them. Here, the BIA's May 23, 2025, decision summarily dismissing Petitioner's 2025 BIA appeal of the IJ's February 2025 order, temporarily rendered that February 2025 order administratively final. *See* 8 C.F.R. § 1241.1(a); 8 U.S.C. § 1231(a)(1)(B)(i). However, removal was stayed by the Eighth Circuit on May 30, 2025, after Petitioner "petition[ed] th[e] court for review of the dismissal of his appeal by the Board of immigration Appeals," COA Order at 1. Moreover, the Court has now granted that petition for review, vacating the BIA's dismissal order and remanding the case to the BIA for further proceedings, including to consider Petitioner's motion to accept his late-filed brief. *Id.* at 4-5. Accordingly, there is no longer a "dismissal of [his second] appeal by the Board of Immigration Appeals," and thus, as yet, no administratively final order of removal. 8 C.F.R. § 1241.1(a); 8 U.S.C. §

1231(a)(1)(B) ("the removal period begins on the latest[9] of the following:" including "(i) The date the order of removal becomes administratively final.").

Finally, persuasive case law precludes also Petitioner's interpretation of finality. The case in this district most squarely addressing the interaction of the 8 U.S.C. § 1226(c), §1231, and 8 C.F.R. § 1241.1—the provisions relevant here, is *Bah v. Cangemi*, 489 F. Supp. 2d 905 (D. Minn. 2007). In it, Judge Schiltz considered a factual situation similar to this one, where the BIA had dismissed an appeal of a removal order in May, but on August 9th "the Eighth Circuit granted [a] petition [for review] and remanded his case to the BIA," so "[t]he removal order that was 'administratively final' before [that] was not 'administratively final' after" it. 489 F. Supp. 2d at 917 ("from the post-August 9 perspective, Bah's removal period still has not begun."). The same is true here. "Once the Eighth Circuit granted [Petitioner's] petition for review and remanded his case to the BIA for further proceedings, his removal order was no longer administratively final." *Id.* 917. *Bah* was decided prior to the Eighth Circuit's *Banyee* decision, so the court went on to assess the continued constitutionality of continued detention under 1226(c) by imposing "substantive or procedural limits not found in the statute's text" *id.* at 919, and applying analysis under *Zadvydas*. *Id.* at 923-924 ("notwithstanding the fact that the IJ's removal order is no longer final, this Court holds that Bah is entitled to habeas relief under *Zadvydas*."). But the Eighth Circuit's holding in *Banyee* now makes clear that: "Due

[9] Though he did not do so in the Petition, to the extent the Petitioner asserts for the first time on reply that his removal period began on August 14, 2025, by operation of § 1231(a)(1)(B)(ii), that would be incorrect, including because § 1231(a)(1)(B) specifies that the removal period begins on the *latest* of the events it specifies. 8 U.S.C. §1231(a)(1)(B).

process imposes no time limit on detention pending deportation," *Banyee*, 115 F.4th at 930, so Petitioner's detention during his removal proceedings, which continue only because, like Banyee, he "is appealing an order that *requires* his removal," *id.* at 934, is constitutional. "The rule has been clear for decades: '[d]etention during deportation proceedings [i]s ... constitutionally valid.'" *Id.* at 931 (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

Thus, Petitioner is detained under 8 U.S.C. § 1226(c), not 8 U.S.C. §1231, and his pre-final order detention is governed by *Banyee*.

IV. Detention of Criminal Noncitizens in Removal Proceedings Is Constitutional

On two occasions, the Supreme Court has addressed the constitutionality of mandatory detention during removal proceedings under § 1226(c). Both times, it declined to find mandatory detention under § 1226(c) unconstitutional. This past year, the Eighth Circuit also addressed a constitutional challenge to detention under 1226(c) and found detention to be a constitutionality valid part of the removal process, characterizing it as a "bright-line rule" that "the government can detain an alien for as long as deportation proceedings are still pending." 115 F.4th at 933 (citing *Demore*, 538 U.S. at 527).

A. *Jennings v. Rodriguez*

In *Jennings*, the Supreme Court's most recent decision regarding § 1226(c), the Court overturned the Ninth Circuit's determination that the statute implicitly requires a bond hearing after six months of immigration detention. *See Jennings*, 583 U.S. at 286. In reversing, it held that the Ninth Circuit improperly applied the statutory canon of constitutional avoidance to read an implicit temporal limitation into § 1226(c). *Id.* at 303.

Significantly, the Court held that the plain text of § 1226(c) mandates detention until the completion of proceedings, and the statute cannot be read to limit detention to six months. *See id.* ("§ 1226(c) makes clear that detention of [noncitizens] within its scope *must* continue 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" (quoting § 1226(a))).

In so holding, the *Jennings* Court implicitly abrogated case law from several other circuits which relied on the canon of constitutional avoidance to impose implied limitations on the length of detention under § 1226(c). The Court held, however, that to apply the canon of constitutional avoidance, a statute at issue must be susceptible of more than one plausible interpretation, and § 1226(c) is not. 583 U.S. at 296-97. Because the language of § 1226(c) is clear and unambiguous, it cannot be construed to contain an unstated temporal limitation. *Id.* at 283 ("§ 1226(c) makes clear that detention of [noncitizens] within its scope must continue 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" (quoting § 1226(a)).

Any constitutional analysis of detention under § 1226(c) must acknowledge, then, that the text of the statute unambiguously requires detention for the entirety of the administrative removal process, *see Jennings*, 583 U.S. at 306, and must presume that such detention is constitutional, *see United States v. Morrison*, 529 U.S. 598, 607 (2000) ("Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.").

B. *Demore v. Kim*

Although the *Jennings* Court ultimately remanded rather than resolve the alleged constitutional issues with § 1226(c), 583 U.S. at 312, the Supreme Court has previously held § 1226(c) to be facially constitutional. *See Demore*, 538 U.S. at 531. In *Demore*, the Supreme Court affirmed mandatory detention during removal proceedings for a criminal noncitizen, even where the detention had lasted over six months. *Id.*

Demore is in line with the Court's longstanding immigration detention jurisprudence. Indeed, in every case in which detention incident to removal proceedings has arisen, the Supreme Court has concluded that such detention is constitutional. *See Demore*, 538 U.S. at 531; *see also Flores*, 507 U.S. at 306 ("Congress has the authority to detain [noncitizens] suspected of entering the country illegally pending their deportation hearings."); *Carlson*, 342 U.S. at 538 ("Detention is necessarily a part of this deportation procedure."); *Wong Wing*, 163 U.S. at 235 ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of [noncitizens], would be valid.").

Before ultimately concluding that the mandatory detention at issue was constitutional, the majority opinion in *Demore* described, at length, the Congressional record made at the time § 1226(c) was passed:

> Congress adopted this provision against a backdrop of wholesale failure by the INS to deal with increasing rates of criminal activity by [noncitizens] . . . . Congress also had before it evidence that one of the major causes of the INS' failure to remove deportable criminal [noncitizens] was the agency's failure to detain those [noncitizens] during their deportation proceedings. *See* Department of Justice, Office of the Inspector General, Immigration and Naturalization Service, Deportation of [Noncitizens] After Final Orders

> Have Been Issued, Rep. No. I–96–03 (Mar.1996), App. 46 (hereinafter Inspection Report) ("Detention is key to effective deportation"); *see also* H.R. Rep. No. 104–469, p. 123 (1995).

Demore, 538 U.S. at 518-19. The Court also noted Congress' concern that "deportable criminal [noncitizens] failed to appear for their removal hearings" at high rates. *Id.* at 519.

In *Demore*, the Court upheld the constitutionality of mandatory detention after a noncitizen had "spen[t] six months" in immigration custody. *Id.* at 531. That timeframe undersold the breadth of the Court's ruling given the steps in the removal process that remained. Despite the six-month length of his prior detention—plus future detention for a removal hearing and decision, plus the possibility of additional time for a subsequent appeal to the BIA and to the Court of Appeals if further appeal was taken—the *Demore* Court, distinguishing *Zadvydas*, found the length of mandatory detention was not "indefinite" or "potentially permanent" and held that detention during "the limited period of his removal proceedings" was constitutionally permissible. *Id.* at 528-30.

C. *Banyee v. Garland*

The Eighth Circuit also recently affirmed the constitutionality of continued detention through the conclusion of removal proceedings under § 1226(c). In doing so it was clear and categorical: "The rule has been clear for decades: '[d]etention during deportation proceedings [i]s . . . constitutionally valid.'" *Banyee*, 115 F.4th 928, 931 (quoting *Demore*, 538 U.S. at 523). It noted that the Supreme Court had repeatedly demonstrated that "no individualized findings of dangerousness [are] necessary," noting "[t]he government c[an] continue to hold detainees simply by reference to the legislative scheme." *Id.* (quoting *Carlson v. Landon*, 342 U.S. 524, 543 (1952).) After reviewing

Supreme Court precedent, it also concluded that: "The overall point, as *Demore* recognized, is that '[d]etention during removal proceedings is a constitutionally permissible part of th[e] process.' . . . . And historically speaking, it always has been." 115 F. 4th at 932 (citations omitted).

The *Banyee* Court emphasized the why was more important than the how long, distinguishing situations such as "delaying deportation to lock up and punish aliens who have not committed a crime" and "keeping aliens locked up when deportation is only 'a remote possibility'" as presenting constitutional issues, "[b]ut not, as in this case, when deportation is still on the table." *Id.* at 115 F.4th 933 (citations omitted). Because detention pending removal proceedings is guaranteed to end when the decision is made regarding whether a petitioner will be deported, either by release or by removal, it is constitutional. *Id.* at 932 ("[N]othing suggests that length determines legality. To the contrary, what matters is that detention pending deportation 'ha[s] a definite termination point'—deporting or releasing the alien—making it 'materially different' from the 'potentially permanent' confinement authorized by other statutes.") (quoting *Demore*, 538 U.S. at 528–29). In short, "the government can detain an alien for as long as deportation proceedings are still pending." *Id.* (citing *Demore*, 538 U.S. at 527).

IV. Petitioner's Detention During His Pending Removal Proceedings, as Required by § 1226(c), Is Constitutionally Permissible

A. The government may detain Petitioner, consistent with due process, throughout his removal proceedings.

When viewed in light of Supreme Court and Eighth Circuit precedent Petitioner's Fifth Amendment due process claim fails. First, unlike the "potentially permanent"

detention at issue under the *Zadvydas* framework upon which Petitioner relies, *see e.g.*, Petition ¶¶ 62-72, Petitioner's detention here is necessarily temporary. *Demore*, 538 U.S. at 528 ("*Zadvydas* is materially different from the present case" under 1226(c)); *Banyee*, 115 F. 4th at 932 ("what matters is that detention pending deportation 'ha[s] a definite termination point'") (citation omitted).

Without a final "decision on whether [he] is to be removed," Petitioner is subject to mandatory detention. *Id.* at 933 (citing *Jennings*, 583 U.S. at 303). Just as in *Banyee*, his removal order is not yet administratively final owing to Petitioner's own BIA appeal. *See Banyee*, 115 F.4th 928, 933 ("Recall that he is waiting for a decision on his appeal" and thus "'has the keys in his pocket' and can 'end[] his detention immediately by 'withdraw[ing] his defense . . . and return[ing] to his native land'")). ") (quoting *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999).

Moreover, noncitizens subject to detention under § 1226(c) pending completion of their removal proceedings "are not entitled to be released under any circumstances other than those expressly recognized by the statute." *Jennings*, 583 U.S. at 303. That unambiguous Supreme Court holding is applicable here:

> [D]etention under § 1226(c) has "a definite termination point": the conclusion of removal proceedings. As we made clear [in *Demore*], that "definite termination point"—and not some arbitrary time limit devised by courts—marks the end of the Government's detention authority under § 1226(c).

Id. at 304.

Moreover, the government has a strong interest here in enforcing its immigration laws. In deciding that certain categories of noncitizens like Petitioner must be detained

during their removal proceedings, Congress was "justifiably concerned that deportable criminal [noncitizens] who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers." *Demore*, 538 U.S. at 513. Accordingly, the Supreme Court upheld the facial constitutionality of detaining criminal noncitizens "for the brief period necessary for their removal proceedings," *id.*, emphasizing that such detention "*pending their removal proceedings* . . . necessarily serves the purpose of preventing [such noncitizens] from fleeing prior to or during their removal proceedings," *id.* at 527-28 (emphasis in original). The Supreme Court premised its due-process analysis on the fact that § 1226(c) detention serves the government's interest in "increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed." *Id.* at 528-29. Thus, for a criminal noncitizen like Petitioner, "[d]etention during removal proceedings is a constitutionally permissible part of th[e] process." *Id.* at 530.

B. Petitioner's Allegations as to Conditions of Confinement Do Not Change the Analysis and Cannot Be Advanced in this Habeas Proceeding.

Under *Demore*, mandatory detention under § 1226(c) during removal proceedings is constitutional where it continues to "serve its purported immigration purpose." 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 690); *see also id.* at 532 (Kennedy, J., concurring); *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 540; *Wong Wing*, 163 U.S. at 235-36. Here, Petitioner makes two separate attempts to characterize his detention as "punitive," only one of which goes to its purpose.

First, Petitioner conclusorily states that his detention is for an improper purpose. *See, e.g.*, Petition ¶ 16 ("the purpose . . . of [Petitioner's detention has become punitive"). The Supreme Court has not yet decided whether due process might prohibit the continued application of § 1226(c) in individual extraordinary circumstances. While relevant authority such as *Banyee* might be read permit room for an as-applied constitutional challenge to detention under §1226(c) in extraordinary circumstances where "ongoing proceedings are a ruse 'to incarcerate [a Petitioner] for other reasons,'" *Banyee*, 155 F.4th at 934 (citing *Demore*, 538 U.S. at 533 (Kennedy, J., concurring)), Petitioner's allegations here fall far short of that bar. Against the backdrop of the government's strong interest in enforcing its immigration laws, ensuring noncitizens are present at the conclusion of removal proceedings, and protecting the community, Petitioner offers only general speculation about present administration's overall "political aims." Petition ¶ 60 (characterizing a DHS press release not specific to him); *id.* ¶ 61 (citing cases in inapposite contexts such as those involving particular allegations that incarceration was "motivated by a desire to punish speech") (citation omitted)).

Here, there is no evidence that local or national ICE personnel are singling out Petitioner for punishment through detention, no evidence that any Federal Respondent has demonstrated individualized animus against him, not even an accusation that he participated in any protected speech for which he might have been punished. This case is a far cry from *Mohammed H. v. Trump*, 2025 U.S. Dist. LEXIS 117197 (D. Minn. June 17, 2025). Indeed, Petitioner's detention during his removal proceedings, which is mandated by statute based on his own criminal history, *see* 8 U.S.C. § 1231, began before the present

administration, whose 'political aims' he refers to, even took office. Ligon Decl. ¶ 9 (showing detention began in December of 2023); Petition ¶ 5 (same).

Petitioner's remaining assertions about punitive detention do not concern its purposes but rather its purported effect. These include his allegations he has been denied medical care and or toiletries, Petition ¶ 17; that he has been discriminated against by correctional officers based on his race or nationality, *id.* ¶ 19; and that he disagrees with discipline for various altercations, *see id.* ¶ (asserting he is "denied the right to self-defense" in "multiple" altercations); *id.* ¶ 20 (complaining of solitary confinement and "a trumped-up disciplinary offense"), *id.* ¶ 21 (complaining of confinement after a fight with other inmates). Leaving aside the substance[10] of such allegations, which do not appear to be connected to any Federal Respondent, as Petitioner concedes, this presents "'as applied' challenge,'" to "his conditions of detention."[11] Petition ¶ 76. Conditions of confinement claims like these are not cognizable in a habeas Petition, which much challenge the fact or duration of confinement, not its conditions. *See Spencer*, 774 F.3d at 470 ("Spencer's constitutional claim relates to the conditions of his confinement. . . . Consequently, a habeas petition is not the proper claim to remedy his alleged injury."); *Kruger*, 77 F.3d 1071, 1073

[10] Federal Respondents note, however, that several of the allegations may plausibly be read to suggest that Petitioner received discipline for infractions and repeated fights while incarcerated but sees himself as "the victim every time," Petition ¶ 18. *See e.g.*, Petition ¶ 21 (admitting to swinging at other prisoners while being referred to as the "'common denominator' in all of the fights he was involved in").

[11] Even had he not admitted as much, Petitioner's own "label cannot be controlling" here. *Kruger*, 77 F.3d at 1071.

(noting "fundamental differences between a civil rights action . . . where a prisoner might seek money damages or injunctive relief from unlawful treatment, and a habeas action").

Under 28 U.S.C. § 2241(c)(3), a writ of habeas corpus "shall not extend to a prisoner" unless he is "in custody in violation of the Constitution or laws or treaties of the United States." The only issue before the Court is the legality of his current detention, and the only relief he could obtain would be release. *See Foy v. Bilderbergers*, 16-cv-0454 (JNE/LIB), 2016 WL 11486912, at *3 (D. Minn. Mar. 17, 2016) ("a litigant cannot combine civil-rights claims (such as conditions-of-confinement claims) and habeas claims in the same action."), *report and recommendation adopted*, 2016 WL 2621952 (D. Minn. May 6, 2016); *Mendez v. Kallis*, No. 20-cv-924 (ECT/ECW), 2020 WL 2572524, at *1 (D. Minn. May 21, 2020) ("Mendez's claims relate to the conditions of his confinement, and consequently, a habeas petition is not the proper claim to remedy his alleged injury."); *see also Banyee*, 115 F.4th at 931, 934 (distinguishing district court tests that factored in resemblance to criminal incarceration; "Nor is it a problem that the jail the government used also housed criminals. It takes more to turn otherwise legal detention into unconstitutional punishment.") (citation omitted).

Thus, the circumstances of this case do not demonstrate that Petitioner's continued detention under § 1226(c) violates due process. As in *Demore*, Petitioner's detention continues to "serve its purported immigration purpose," 538 U.S. at 527, *i.e.*, ensuring his appearance and protecting the community from an individual already convicted of serious crimes that Congress has determined warrant mandatory detention.

The government's interest in executing the removal order remains significant. *See id.* at 519-20.

VI. Petitioner's Motion for a Temporary Restraining Order Should be Denied.

Petitioner also fails to demonstrate that a temporary restraining order is appropriate in this case. If the Court denies his habeas petition for the reasons discussed above, then his motion for a temporary restraining order is moot. However, were the Court to reach the merits of the TRO Motion, it should be denied on the merits as well.

To start, as with the Petition, Petitioner's TRO Motion is predicated on a *Zadvydas* argument that is not applicable given the present basis for detention, *see* supra §§ III, IV.A. However, in the TRO Motion, his factual allegations too, are inaccurate and conflict with those made in his Petition. *See* ECF 3 at 6 (erroneously suggesting that "Petitioner's removal period began on June 19, 2018"); *id.* (incorrectly asserting Petitioner's removal period elapsed prior in September 2019, prior to his actual detention); *id.* (suggesting Petitioner was released on an order of supervision). Petitioner seemingly acknowledges that the purpose of a temporary restraining order is to "preserve the status quo until the merits are determined." Dkt. 3, at 13 (citing *Dataphase Sys. v. C L Sys.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc)). But the status quo right now is detention during removal proceedings. 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 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, Petitioner cannot show any likelihood of success on the merits of his habeas petition. His present detention is constitutional and is mandated by statute. *See Banyee*, 115 F.4th at 931 ("The rule has been clear for decades: '[d]etention during deportation proceedings [i]s . . . constitutionally valid.'"). His brief does not persuasively argue otherwise—he just globally incorporates "all prior arguments" and declares that the *Dataphase* factors are satisfied. Dkt. 3, at 13. Such anemic analysis cannot justify the extraordinary step of entering injunctive relief, particularly in circumstances of mandatory detention. The first *Dataphase* factor thus 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, Petitioner will remain detained during his appeal in removal proceedings, thus ensuring that he is present if ordered removed and that the community is protected. But the temporary restraining order that Petitioner seeks will cause harm to the government. There is a strong public interest in the efficient administration of the nation's immigration laws and, as Congress determined, in the detention of noncitizens who commit serious felony crimes of violence during their

removal proceedings. Petitioner's proposed order would necessarily hinder the governments enforcement of its immigration laws. It would also incur costs associated with supervising Petitioner outside of detention and costs associated with re-detaining him later to carry out his removal, if ordered. 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 Petitioner's motion for a temporary restraining order.

CONCLUSION

Respondents respectfully request that the Court deny Petitioner's Petition and accompanying TRO Motion. 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.[12]

CONCLUSION

For the foregoing reasons, Petitioner's detention does not violate the Constitution or laws of the United States. Respondents therefore respectfully request that the Petition be dismissed.

Dated: August 22, 2025

JOSEPH H. THOMPSON
Acting United States Attorney

s/ Liles H. Repp
BY: LILES H. REPP

[12] In a habeas corpus proceeding, an evidentiary hearing is appropriate only where material facts are in dispute. *Toney v. Gammon*, 79 F.3d 693, 697 (8th Cir. 1996); *Ruiz v. Norris*, 71 F.3d 1404, 1406 (8th Cir. 1995). Though Petitioner requests evidentiary hearing "about the punitive nature of [his] detention at Sherburne County Jail," those allegations are necessary to adjudicate this Petition or even properly part included in it.

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