UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Roosevelt 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-03198-PJS-DTS

PETITIONER'S OBJECTIONS TO THE MAGISTRATE'S REPORT & RECOMMENDATION

EXPEDITED HANDLING REQUESTED

INTRODUCTION

On September 19, 2025, the magistrate issued a Report & Recommendation ("R&R") recommending denial of Bartu's habeas petition. Because the magistrate erred, Pursuant to Fed. R. Civ. P. 72(b) and Local Rule 72.2(b), Petitioner objects and seeks entry of a new decision granting habeas corpus or, at minimum, an evidentiary hearing.

PROCEDURAL & FACTUAL HISTORY

Bartu adopts and incorporates by reference the R&R's procedural and factual history, as supplemented by the procedural and factual history section at ECF No. 12 at 2-

7. Additionally, Petitioner was recently transferred to Camp 57 ('Louisiana ICE Processing Center') in Angola, Louisiana, previously known as 'The Dungeon,' where conditions are horrendous and punitive. The conditions Petitioner is experiencing in Louisiana are horrendous and exceedingly punitive. *See generally ACLU Cites Lack of Transparency and Financial Profits of ICE Detention at Angola*, KTALNEWS (Sept. 17, 2025)[1] (noting the dorm used to house ICE inmates in a for-profit private maximum security prison that was previously shut down in 2018 due to inhumane conditions); Samantha Santoro, *ICE Incarcerates Immigrants in Notorious Unit at Louisiana State Penitentiary Angola*, SOLITARYWATCH.ORG (Sept. 10, 2025) ("According to Governor Landry, the detained immigrants will be 'completely isolated' from the rest of the prison population. Located on the grounds of a former slave plantation, 'Angola has a particularly dark history of abuse and repression that's almost singular in prison history in the United States,' said Eunice Cho, senior counsel at the National Prison Project at the American Civil Liberties Union. Louisiana has also been the subject of legal backlash for isolating incarcerated youth at Angola in 'windowless concrete cells without air conditioning.'") (citing The New York Times).

ARGUMENT

The R&R errs in three significant ways, each of which independently requires reversal or, at minimum, an evidentiary hearing. First, the R&R incorrectly holds that Petitioner's continued custody is lawful under 8 U.S.C. § 1231(a)(6) notwithstanding the

[1] Available at: https://www.youtube.com/watch?v=Va0DJAClEpc.

indefinite and automatic stay of removal that remains in effect for as long as Petitioner's post-removal-order withholding of removal and DCAT proceedings remain before the Board of Immigration Appeals ("BIA" or "Board") and/or the immigration court. Second, the R&R incorrectly held that civil detainee condition of confinement claims alleging unconstitutional punishment are not cognizable in habeas corpus proceedings notwithstanding the plain language of *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), which held that civil immigration detention must remain nonpunitive in both purpose and effect. Third, from a procedural perspective, the magistrate erred by recommending denial of the petition in the absence of an evidentiary hearing.

I. Because removal is legally barred by an automatic, indefinite stay, the Government cannot show removal is 'reasonably foreseeable' under § 1231(a)(6) and *Zadvydas*.

The magistrate erred in holding that: (1) Bartu failed to meet his burden of establishing no significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"); and (2) even if Bartu met this burden, the government has rebutted it via obtention of a travel document. *See* ECF No. 15 at 9-10.

Once past the removal period, § 1231(a)(6) permits custody only so long as removal remains within "a period reasonably necessary to bring about [removal]"; where there is no SLRRFF, continued detention is impermissible. *Zadvydas v. Davis*, 533 U.S. 678, 689–702 (2001); *see also Clark v. Martinez*, 543 U.S. 371, 377–78 (2005); 8 C.F.R. § 241.13(a)–(b) (establishing procedures when an alien demonstrates no SLRRFF).

Bartu met his burden of establishing no SLRRFF by showing an indefinite automatic administrative stay of removal prevents his removal for as long as his post-

order-proceedings remain before the BIA or immigration court, which are currently pending with no anticipated or known end date. Thus, the case posture makes removal legally impossible while proceedings remain pending, regardless of any travel document. Under similar circumstances, other courts have found that no SLRRFF established and have ordered release. *Martinez v. Gonzales*, 504 F. Supp. 2d 887, 900 (C.D. Cal. 2007); *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 376 (W.D.N.Y. 2009) ("the price for securing a stay of removal should not be continuing incarceration").

The magistrate erred by holding the government's obtention of a travel document rebutted Bartu's showing of no SLRRFF. The sole evidence the magistrate relied upon was an affidavit claiming that the government has a travel document for Bartu. *See* ECF No. 15 at 10 (citing the Ligon Decl., ¶ 22). Two of the cases the magistrate relied upon are inapposite because neither case involves a situation where an indefinite and automatic stay of removal prevents deportation by operation of law notwithstanding the existence of a travel document. *See Joseph K. v. Berg*, No. 18-cv-3125, 2019 WL 13254377, at *1 (D. Minn. Mar. 15, 2019), *report and recommendation adopted*, 2019 WL 13254378 (D. Minn. May 3, 2019) ("Petitioner waived his [BIA] appeal"); *Sokpa-Anku v. Paget*, No. 017-CV-1107, 2018 WL 3130681, at *1 (D. Minn. June 8, 2018), *report and recommendation adopted*, 2018 WL 3129002 (D. Minn. June 26, 2018) (acknowledging "the Board of Immigration Appeals dismissed his appeal" before recommending a grant of the habeas petition).

The magistrate's citation to *Perez v. Berg*, No. 24-CV-3251, 2025 WL 566884, at *4 (D. Minn. Jan. 6, 2025), *report and recommendation adopted*, 2025 WL 566321 (D.

Minn. Feb. 20, 2025) is a citation to an unpersuasive and unpublished decision from this district. *Perez* is cited for the proposition that pending withholding-only proceedings are insufficient, on their own, to demonstrate that a noncitizen's removal is not likely to occur in the reasonably foreseeable future. *Perez* was wrongly decided for a number of reasons, not the least of which is that it indicates that the existence of an indefinite administrative stay of removal does not constitute "evidence" within the meaning of the Federal Rules of Evidence. *See Perez*, 2025 WL 566884, at *4 ("When a petitioner is unable to point to evidence…") (citation and internal quotation omitted). *But see Evidence*, BLACK'S L. DICT. (12th ed. 2024). The fact of the stay of removal is "evidence" of indefinite non-removability which necessarily and logically requires finding that while a stay of removal is in effect, there is no significant likelihood of removal for at least as long as the stay of removal is in effect, shifting the analysis to whether a stay of removal is likely to be lifted within the reasonably foreseeable future.

More importantly, *Perez* is distinguishable because Bartu, unlike the petitioner in *Perez*, did not repeatedly request continuances that delayed proceedings prolonging detention. *See Perez*, 2025 WL 566884, at *4 ("Moreover, the length of Mr. Perez's 'withholding-only' proceedings, is in part, due to the three continuances he sought on December 28, 2023, February 27, 2024, and May 1, 2024. These Mr. Perez-requested continuances delayed the proceedings and prolonged Mr. Perez's detention by four months. A petitioner cannot request that proceedings be delayed four months and then complain he has been detained four months beyond the presumptively reasonable removal period. Mr. Perez's time-based arguments are insufficient to meet his initial burden.")

(citations omitted). Mr. Bartu's length of post-order detention is also longer than that in *Perez*, which is relevant because *Zadvydas* states, "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701.

The magistrate's citation to *Castaneda v. Perry*, 95 F.4th 750, 758 (4th Cir. 2024) suffers from many of the same defects as *Perez*. Though *Castaneda* is published, it is not precedent in this circuit and does not bind this Court. Moreover, *Castaneda* only addressed pending withholding-only proceedings being insufficient when "standing alone." Similarly, *Castaneda* is also distinguishable because Bartu, unlike *Castaneda* is not in withholding-only proceedings. He was placed into regular removal proceedings years ago, and the only reason his withholding claim is still pending is because: (1) the IJ made errors of law that required a remand for further consideration of withholding of removal; (2) the BIA failed to address Petitioner's unresolved DCAT claims when dismissing the second administrative appeal; (3) the BIA was abusive in dismissing the second administrative appeal, requiring a petition for review and emergency stay of removal to the Eighth Circuit, which was granted and led to a remand to the BIA and further delays; and (4) Petitioner's counsel provided ineffective assistance of counsel on the second appeal. None of these are delays caused by Petitioner, nor are they triggered by Petitioner's decision to claim fear in withholding-only proceedings despite the pre-existence of a lawful deportation order. Petitioner's facts are unique and do not mesh with *Castaneda*, *Perez*, or other similar cases addressing withholding-only proceedings.

Notably, each case the undersigned has reviewed that states pending withholding-

only proceedings do not justify a finding of no SLRRFF all claim that the noncitizen has failed to identify any case holding that no SLRRFF was found due to pending withholding of removal proceedings. Conversely, Petitioner has identified three such cases from three different jurisdictions in three different circuits that support his position. *Martinez v. Gonzales*, 504 F. Supp. 2d at 900 (C.D. Cal. 2007) ("**[E]ven though petitioner's petition for review at some point will be adjudicated, there is no timetable or date for disposition of his petition or for effectuating his removal if he loses. Petitioner's removal therefore is not reasonably foreseeable, and his continued detention is not reasonably necessary to effect his removal.**") (emphasis added); *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 376 (W.D.N.Y. 2009) ("[t]he price for securing a stay of removal should not be continuing incarceration"); *Oyedeji v. Ashcroft*, 332 F. Supp. 2d. 747, 752-755 (M.D. Pa. Aug. 24, 2004) (ordering release after noting "The price for securing a stay of removal should not be continuing incarceration. … Oyedeji should not be effectively punished for pursuing applicable legal remedies."); *see also Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) ("An alien who would not normally be subject to indefinite detention cannot be so detained merely because he seeks to explore avenues of relief that the law makes available to him. Further, although an alien may be responsible for seeking relief, he is not responsible for the amount of time that such determinations may take."). The Court must not be persuaded by decisions[2] that failed to consider key

[2] The remaining cases cited by the magistrate on page 10 of the R&R are inapposite because they either did not involve an active and indefinite stay of removal renders removal a legal impossibility for the length of the indefinite stay. *See Nhean v. Brott*, No. CV 17-28, 2017 WL 2437268, at *1 (D. Minn. May 2, 2017), *report and recommendation adopted*, 2017

authorities solely because the parties in those proceedings failed to identify the authorities for the Court.

A travel document may address practical obstacles to removal when no other impediments to removal exist, but it does nothing when removal is legally impossible due to an indefinite automatic administrative stay of removal pending the outcome of Petitioner's administrative removal proceedings. Under *Zadvydas* and § 241.13, the question is not whether ICE is administratively "ready," but whether the government can actually remove the person in the reasonably foreseeable future. Where a stay and active agency proceedings foreclose removal on an indefinite and extended timetable, the government cannot carry its burden to show a significant likelihood of removal anytime soon. *See Zadvydas*, 533 U.S. at 699–701; 8 C.F.R. § 241.13(a)–(b); *Oyedeji*, 332 F. Supp. 2d. at 752-755; *Ly*, 351 F.3d at 272; *Martinez*, 504 F. Supp. 2d at 900.

Moreover, the mere existence of a travel document does not guarantee removal in the reasonably foreseeable future, particularly when the BIA has previously remanded proceedings, the Eighth Circuit has granted a stay of removal and subsequently remanded the case after an unlawful and abusive BIA dismissal of an administrative appeal (leading to an automatic and indefinite stay of removal). Although ICE obtained a travel document, the indefinite stay of removal, nullifies its immediate utility. Furthermore, travel

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WL 2437246 (D. Minn. June 5, 2017) ("Nhean was ordered removed from the United States to Cambodia and he did not appeal the decision"); *Gael A. O. v. DHS/ICE Off. of Chief Couns.*, No. 18-CV-3269, 2019 WL 3325839, at *4 (D. Minn. May 13, 2019), *report and recommendation adopted*, 2019 WL 3322920 (D. Minn. July 24, 2019) (no active stay).

documents often have expiration dates, and the government has provided no evidence that the document will remain valid throughout the duration of Bartu's ongoing legal proceedings, which could continue for months or years. *See Deqa M. Y. v. Barr*, No. 20-CV-1091 (ECT/DTS), 2020 WL 4928321, at *2 (D. Minn. June 16, 2020) ("Deqa's travel document also expired May 1, 2020. Although ICE has applied for and expects to receive a renewal, the Government does not say when that renewal request was made or how long such requests typically take to process.") (citations omitted).

These errors are dispositive and demonstrate that Bartu must be released on an Order of Supervision pursuant to *Zadvydas* and 8 C.F.R. § 241.13.

II. Civil immigration detention must remain nonpunitive in purpose and effect; here, penal-like conditions render continued custody unconstitutional and cognizable in habeas.

Civil immigration detention must remain nonpunitive both in purpose and in effect. *Zadvydas*, 533 U.S. at 690. Unlike conditions challenges brought by convicted prisoners under the Eighth Amendment, Petitioner's claim arises under the Fifth Amendment Due Process Clause. Immigration detention is lawful only so long as it remains nonpunitive in both purpose and effect. Detention that is excessive in relation to its nonpunitive purpose, or indistinguishable from criminal punishment, violates due process. *See Bell v. Wolfish*, 441 U.S. 520, 535–39 (1979) (civil detention conditions that amount to punishment violate due process); *Demore v. Kim*, 538 U.S. 510, 527–28 (2003); *Zadvydas*, 533 U.S. at 690-91.

The magistrate concluded that Petitioner's claims are not cognizable in habeas, but that conclusion rests on a misapplication of precedent. In *Spencer v. Haynes*, 774 F.3d

467, 469–70 (8th Cir. 2014), the Eighth Circuit held that federal prisoners could not challenge conditions of confinement under § 2241. But *Spencer* involved criminal custody, which is designed to be and is inherently punitive. Civil immigration detention, by contrast, is constitutional only if nonpunitive. When confinement conditions transform civil custody into punishment, they go to the very legality of confinement and are properly reviewable in habeas. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.") (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Petitioner incorporates by reference the arguments addressing this issue made in his reply memorandum. *See* ECF No. 12 at 11-15.

Other courts have recognized habeas jurisdiction in precisely these circumstances. *See, e.g.*, *Aamer v. Obama*, 742 F.3d 1023, 1032–36 (D.C. Cir. 2014) (detainees may challenge punitive conditions in habeas because they render custody unlawful); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (unconstitutional immigration detention is reviewable in habeas); *Aditya W. H. v. Trump*, No. 25-CV-1976 (KMM/JFD), 782 F. Supp. 3d 691 (D. Minn. May 14, 2025) (finding habeas jurisdiction and ordering release where immigration detention was used punitively against immigrant detainee exercising First Amendment rights); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), --- F. Supp. 3d ----, 2025 WL 1692739 (D. Minn. June 17, 2025) (same). And in *Banyee v. Garland*, 91 F.4th 940, 947 (8th Cir. 2024), the Eighth Circuit acknowledged that while "ordinary" conditions claims may not proceed in habeas, the writ remains available where "something more" is shown.

This case presents exactly that "something more." Bartu's allegations are not routine complaints about jail operations. They describe systemic denial of medical care, solitary confinement as punishment, physical assaults by staff, fabricated disciplinary sanctions, and discriminatory treatment. Such conditions are the hallmarks of penal incarceration, not civil detention. They are antithetical to the limited purposes of immigration custody — ensuring appearance and protecting the community — and transform confinement into unconstitutional punishment.

The unrebutted record confirms this. Neither ICE nor the county sheriff has contested Bartu's sworn allegations. The government's declarations are silent on these facts, leaving them undisputed. Respondents' failure to contest these allegations constitutes, at minimum, a waiver of any factual dispute. *Cf.* Fed. R. Civ. P. 8(b)(6). On this record, Bartu's detention is punitive in both purpose and effect, and habeas relief is warranted.

III. The Court must, at minimum, hold an evidentiary hearing.

A habeas petition may be summarily denied only if the petitioner's allegations, even if accepted as true, would not entitle him to relief, or if the record conclusively refutes them. *Schriro v. Landrigan*, 550 U.S. 465, 474–75 (2007); *Townsend v. Sain*, 372 U.S. 293, 312–13 (1963); *Harris v. Nelson*, 394 U.S. 286, 300 (1969); *Lindner v. Wyrick*, 644 F.2d 724, 729 (8th Cir. 1981); *Pennington v. Housewright*, 666 F.2d 329, 331 (8th Cir. 1981). When the record consists only of the habeas petition and a denial order, the factual allegations "must for present purposes be accepted as true." *Cash v. Culver*, 358 U.S. 633, 635 (1959); *Edgemon v. Lockhart*, 768 F.2d 252, 255 (8th Cir. 1985). The Eighth Circuit

also requires that habeas petitions be liberally construed in the petitioner's favor. *White v. Pescor*, 155 F.2d 902, 904 (8th Cir. 1946). And where the government fails to contest allegations, courts may accept them as true absent a hearing. *Toney v. Gammon*, 79 F.3d 693, 697 (8th Cir. 1996); Fed. R. Civ. P. 8(b)(6).

Here, Petitioner's verified allegations — prolonged solitary confinement, assaults by staff, fabricated disciplinary charges, and denial of medical care — if true, establish that his civil detention has become punitive in purpose and effect. The government has offered no rebuttal. The Ligon Declaration is silent. That silence requires either acceptance of Petitioner's allegations as true or the convening of an evidentiary hearing. *Accord, e.g.*, Fed. R. Civ. P. 8(b)(6); Fed. R. Civ. P. 56(e)(2). The record does not conclusively refute Petitioner's allegations. Petitioner is therefore entitled to an evidentiary hearing before his petition may be denied. *See generally Hassoun v. Searls*, 467 F. Supp. 3d 111, 135 (W.D.N.Y. 2020) (holding an evidentiary hearing in an immigration habeas case to determine whether release "would threaten the national security of the United States or the safety of the community or any person").

An evidentiary hearing appears to be especially important with respect to the punitive detention claims, especially to the extent that Respondents have transferred Petitioner to maximum security facility in Louisiana to be housed in a dorm that was previously shut down in 2018 for inhumane conditions and reopened solely to house ICE detainees. *Supra.*

IV. Miscellaneous

The magistrate erred by utilizing the unencumbered time approach utilized in *Bah*

v. Cangemi, 489 F. Supp. 2d 905 (D. Minn. 2007) to hold that Petitioner has only been detained for eight months post-final-order, instead of holding that Petitioner has been detained post-final-order for more than 11 months. *See* ECF No. 15 at 8-9; *see also* ECF No. 1, ¶ 7. As Petitioner noted in his reply memorandum, the plain language of 8 U.S.C. § 1231(a)(1)(B)(ii) does not apply to Bartu's case because the stay of removal granted by the Eighth Circuit was granted in connection with a petition for review that did not challenge a final removal order and the plain language of the statute uses the conjunctive "and" to hold that the removal period is paused by a stay of removal at the circuit court only when "**the removal order** is judicially reviewed **and**...." *See* 8 U.S.C. § 1231(a)(1)(B)(ii) (emphasis added); ECF No. 12 at 9-10 (expressly incorporated by reference). The extra three months of custody favors a release order.

Petitioner objects to the R&R to the extent it recommends denying the TRO as moot in light of the recommended denial of the habeas petition. Because the R&R must be disregarded, and the magistrate reversed, the rationale for denying the TRO is improper.

CONCLUSION

Bartu's detention is unlawful under § 1231(a)(6) because removal is not significantly likely in the reasonably foreseeable future and his confinement has become punitive in violation of due process. These present independently valid reasons for granting the petition. The Court must reject the Report and Recommendation and order Bartu's immediate release or, at minimum, convene an evidentiary hearing.

DATED: September 27, 2025

Respectfully submitted,

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