UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JESUS ALBERTO PEREZ, Petitioner, v. Pamela Bondi, Attorney General, Kristi Noem, Secretary, U.S. Department of Homeland Security, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement, David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement. Respondents.	Case No. 0:26-cv-261 **PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

INTRODUCTION

Petitioner Jesus Alberto Perez ("Mr. Perez") seeks a Temporary Restraining Order ("TRO") pursuant to Fed. R. Civ. P. 65(b) enjoining Respondents from moving Petitioner out of the jurisdiction of this Court and away from legal counsel. Petitioner's impending transfer is just part and parcel of Respondents' widespread bids to evade judicial accountability. This Court should grant the TRO and order the government not to move Mr. Perez out of this District, or alternatively to release him entirely pending the resolution of his habeas proceedings.

BACKGROUND

Petitioner has been illegally detained pursuant to a policy that Respondents have been resolutely and violently enforcing, despite a literal mountain of very explicit rulings from this Court and judges across the country denouncing Respondents' application of mandatory detention pursuant to 8 U.S.C. 1225(b)(2) to applicants for asylum residing in the United States.

Mr. Perez filed a habeas petition challenging his continued unlawful detention. (ECF 1). This petition contains straightforward factual allegations that mirror circumstances described in other habeas petitions where this Court has granted release. *Id*.; *see also Ahmed A v. Bondi*, Case No. 25-4776 (JWB/DJF) (January 6, 2026); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142–48, 1150–52 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 968–970 (D. Minn. 2025); *Mayamu K. v. Bondi,* Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *7–8 (D. Minn. Oct. 20, 2025).

In response to similar habeas petitions, Courts in this District routinely issue Orders to Show Cause, requiring Respondents to respond on an expedited basis, usually within a matter of days. *See, e.g.*, *M.-M. v. Easterwood et al.*, Case No. 26-cv-106 (NEB/ECF), Dkt. 3 (D. Minn. Jan. 9, 2026) (ordering a response within three days of the petition's filing).

Despite (or, more cynically, *because of*) Respondents' knowledge that this Court now routinely orders Respondents to release the detained noncitizens similarly situated to Petitioner who actually manage to find the resources and ability to file habeas petitions, Respondents are transferring noncitizen detainees outside of the jurisdiction of this Court

at an ever-increasing rate. People in immigration detention are transferred out of the State of Minnesota a matter of days or hours, which impedes their efforts to ask this Court to intervene in Respondents' deluge of recklessly unconstitutional and dangerous activity.

Respondents threaten to disappear Mr. Perez away from those who might otherwise be able to hold Respondents accountable for the ongoing violations of his rights and causation of irreparable harm. Accordingly, Petitioner moves this Court to preserve its jurisdiction over the petition pursuant to the All Writs Act, 28 U.S.C. § 1651 (see *F.T.C. v. Dean Foods Co*., 384 U.S. 597, 603 (1966)), and immediately order that Mr. Perez not be removed from the territory of the District of Minnesota, or alternatively be released entirely, pending further order of this Court.

FACTS

Petitioner is a Minnesota resident who was recently and unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE"). *See generally* ECF 1. Upon information and belief, Mr. Perez is currently being held in the Bishop Henry Whipple Federal Building in St. Paul ("Whipple"). Despite being in civil immigration custody—not criminal incarceration—he finds himself confined in "abhorrent" physical conditions, with restrictions that severely limit his ability to communicate with the outside world or to treat his medical conditions. *See* Affidavit of Jonah Giese ("Geise Decl.") at 5.

Petitioner's legal counsel has been told they are not permitted to visit noncitizen clients detained at the Whipple. *Hernandez v. Easterwood*, Case No. 26-0162 (MJD/DTS) Dkt. 5, (January 12, 2026). ICE refuses to permit in-person attorney visits,

leaving Petitioner now unable to consult in-person with his attorney about his illegal detention or any other urgent legal matters. *Id*. This deprivation of access to counsel is compounded by ICE's practice of transferring detainees to facilities outside Minnesota—often before they have any opportunity to speak with an attorney. Giese Decl. at ¶10. These transfers occur without notice to detainees, their loved ones, or their legal counsel.

ICE's practice of transferring detainees out of Minnesota has increased drastically over the past year. Recent reporting indicates that for the year 2025, ICE transferred an average of 114 detainees per month to detention facilities outside of Minnesota, as compared to only an average of 22 transfers per month in 2024.[1] Given these trends, it is more likely than not that ICE intends to transfer Petitioner to a facility outside of Minnesota.

After Petitioner's warrantless arrest, Respondents now subject Petitioner to inhumane conditions of confinement and deprive him of the ability to communicate these injustices to the outside world. Giese Decl. at ¶¶5-7. Respondents even refused to allow members of US Congress to visit the Whipple. Sarah Davis, *Minnesota Reps Denied Access to ICE Facility as Protests Persist*, THE HILL (Jan. 10, 2026). With this behavior, Respondents are pulling out all the stops to erode checks and balances from the legislative and judicial branches. They defy Congress's power to conduct unannounced

[1] Joey Peters and Cynthia Tu, *ICE Enforcement Prompts Relocation of Detainees Outside of Minnesota, Worrying Attorneys about Access, Rights*, SAHAN J. (Dec. 23, 2025), https://sahanjournal.com/immigration/ice-enforcement-prompts-relocation-of-detainees-outside-of-minnesota-worrying-attorneys-about-access-rights/ (last accessed Jan. 11, 2026).

visits to federally funded detention centers, and play jurisdictional games with indigent detainees flown by the hundreds out of this Court's reach–sometimes within a matter of hours following their inevitably warrantless arrests.

A transfer out of Minnesota would subject Mr. Perez to the imminent risk of further isolation, possible medical neglect, and an inability to pursue his meritorious legal claims for release. Shipping Petitioner to Texas or some other arbitrary and distant facility would directly contravene Mr. Perez's constitutional rights, including his rights to a fair hearing in this Court and to the due process of law. In Texas, or wherever Mr. Perez might be sent, without access to his Minnesota-licensed counsel, Petitioner cannot vigorously litigate this case in the District of Minnesota.

By transferring Petitioner out of the District of this Court and foreclosing Petitioner's access to counsel during this critical window for legal intervention, the result is that detainees like Petitioner are subjected to unlawful detention with no recourse. The protections in the US Constitution are rendered optional if agents can move fast enough to shepherd victims away from the attorneys and judges seeking to hold them to account. Without injunctive relief, Respondents can pick and choose which laws they follow, simply by engaging in forum selection through human trafficking.

LEGAL STANDARD

"The same legal standard applies to both a request for a temporary restraining order and a request for a preliminary injunction." *Jackson v. Macalester Coll.*, 169 F. Supp. 3d 918, 921, n.1 (D. Minn. 2016). When evaluating the propriety of either a temporary restraining order ("TRO") or a preliminary injunction, a district court

considers the four "*Dataphase* factors": "(1) the threat of irreparable harm to the movant, (2) the balance between this harm and the injury that the injunction will inflict on other parties, (3) the probability that the movant will succeed on the merits and (4) the public interest." *Id.* at 921 (citing *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981)). The third factor—the probability of success on the merits—is the predominant factor. *Id.*

The broad consensus is that this Court has the power to preserve its own jurisdiction over a noncitizen's motion for injunctive relief by preventing immigration authorities from transferring the petitioner out of the District of Minnesota during pending habeas corpus proceedings. *See*, *e.g.*, *Frank v. Olson*, No. 26-CV-44 (JMB/DTS), 2026 WL 36120, at *1 (D. Minn. Jan. 6, 2026); *Ijeoma C. v. Bondi*, No. 25-CV-4770 (JMB/ECW), 2025 WL 3764899 (D. Minn. Dec. 30, 2025); *Hakan K. v. Noem*, No. 25-CV-4722 (JMB/DTS), 2025 WL 3719718 (D. Minn. Dec. 23, 2025); *Ali C. v. Bondi*, No. 25-CV-4615 (JMB/LIB), 2025 WL 3642066 (D. Minn. Dec. 16, 2025); *Victor V. v. Bondi*, No. 25-CV-4480 (JMB/ECW), 2025 WL 3483911, at *2 (D. Minn. Dec. 4, 2025); *and Francisco T. v. Bondi*, No. 25-CV-03219 (JMB/DTS), 2025 WL 2629800, at *2 (D. Minn. Aug. 13, 2025).

ARGUMENT

For the reasons discussed herein, Petitioner easily satisfies each of the *Dataphase* factors, and his request for a TRO or, in the alternative, a preliminary injunction, should be granted. Petitioner will suffer irreparable harm if Respondents prolong Petitioner's detention by sending him out of Minnesota. His habeas petition is in all likelihood

meritorious, Respondents are not burdened by being asked to respect due process, and the public would benefit from the rule of law being restored in Minnesota.

I. Petitioner Will Suffer Irreparable Harm If Respondents Remove Him from the State of Minnesota.

The Court may grant a TRO or preliminary injunction where the moving party will suffer irreparable harm. "Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages." *Erickson v. Hutchinson Tech. Inc.*, 158 F. Supp. 3d 751, 760 (D. Minn. 2016) (quotation omitted). A temporary injunction should be granted to maintain the status quo of the parties until the case can be decided on the merits where the rights of one party will be irreparably injured or where relief sought in the main action will be ineffectual or impossible to grant. *Id.* at 756.

In functionally identical circumstances, a noncitizen detainee facing imminent transfer during pendent habeas proceedings, this Court has found in no uncertain terms: "[g]iven the cited history of Respondents moving immigration detainees around the country on short notice and the harms that would arise from such an action here, the Court finds that [Petitioner] has established a threat of irreparable harm." *Escalante v. Bondi*, No. 25-cv-3051 (ECT/DJF), 2025 WL 2212104, at *2 (D. Minn. July 31, 2025), *report and recommendation adopted*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025).

Noncitizen habeas petitioners indisputably suffer irreparable harm should the government transfer them before judges are able to rule on the merits of their petitions:

> [j]ustice requires keeping [Petitioner] in this District until the merits of his underlying habeas action can be determined. If Respondents transfer Frank

> V. out of this District, he will suffer irreparable harm: he may lose access to counsel, the Court may lose jurisdiction over the custodial Respondents, and Frank V. may no longer be able to participate in litigation. These are injuries that are concrete and imminent and that cannot be remedied after they occur.

Frank V. v. Olson, No. 26-CV-44 (JMB/DTS), 2026 WL 36120, at *1 (D. Minn. Jan. 6, 2026).

Petitioner's presence in Minnesota where counsel and this Court have access and jurisdiction, respectively, are of the utmost importance. Respondents' threat to relocate Petitioner while in ICE detention in Minnesota constitutes irreparable harm.

II. The Balance of Equities Favors Keeping Petitioner in Minnesota.

The second *Dataphase* factor requires the Court to weigh the harm to be suffered by the Petitioner if the temporary relief is denied against "the harm that a preliminary injunction would cause to other parties, and the public interest." *Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 372 (8th Cir. 1991).

As discussed, Petitioner is suffering and will continue to suffer irreparable harm if a TRO is not issued. Petitioner is cramped in unhealthy and confined quarters with inadequate and inhumane arrangements for sleeping or resting. Respondents' denial of basic humane conditions and medical care is a violation of Petitioner's Fifth Amendment right to due process, and risks irreparable harm up to and including removal from the country without the opportunity for a fair hearing. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982) (finding that civil detainees are "entitled to more considerate treatment than a criminal detainee, whose conditions of confinement are designed to punish."). Given that Petitioner is just one noncitizen in a long line of cases filed in the past month before this Court, many of whom have been transferred almost contemporaneously with the filing of

their habeas petitions, absent a TRO, Respondents' violations will assuredly continue unabated.

On the other hand, there is no harm whatsoever to Respondents if a TRO is granted. *Escalante*, 2025 WL 2212104, at *2 (noting that in grating the TRO, "Respondents will be prevented from removing [petitioner] from the geographic boundaries of this District only temporarily . . . The Court finds the potential harm to Respondents . . . is minimal.") and *Ijeoma*, 2025 WL 3764899 *2 ("there is no indication that Respondents will experience any harm from an order temporarily prohibiting [Petitioner's] transfer out of this District while this action is pending").

Because Petitioner is suffering irreparable harm due to the violation of his constitutional rights, and Respondents cannot demonstrate *any* legitimate interest that would be harmed by holding Petitioner in Minnesota for another few days or releasing him entirely, the balance of equities weighs strongly in favor of the issuance of a TRO or preliminary injunction.

III. Given Respondents' Blatant Violations of Well-Established Law, Petitioner is Likely to Succeed on the Merits

The third *Dataphase* factor asks the Court to evaluate the probability that the Petitioners will succeed on the merits. "[T]he probability of success on the merits has been referred to as the most important of the four factors." *Arnzen v. Palmer*, 713 F.3d 369, 372 (8th Cir.2013). "To obtain a preliminary injunction, Petitioner must demonstrate that it has a fair chance of prevailing on its claims." *Marvin Lumber & Cedar Co. v. Severson*, No. CV 15-1869 (MJD/LIB), 2015 WL 5719502, at *7 (D. Minn. Sept. 28,

2015) (quotation omitted).

On the ultimate issue here, Plaintiff's habeas petition is likely to be successful. Respondents' basis for his detention relies entirely on an interpretation of immigration law that has been resoundingly rejected by district courts throughout the country, including in Minnesota.

On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. *See, e.g.*, *Ahmed A v. Bondi*, Case No. 25-4776 (JWB/DJF) (January 6, 2026); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142–48, 1150–52 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 968–970 (D. Minn. 2025); *Mayamu K. v. Bondi,* Civ. No. 25-3035

(JWB/LIB), 2025 WL 3641819, at *7–8 (D. Minn. Oct. 20, 2025); *R.E. v. Bondi*, No. 0:25-cv-3946-NEB, 2025 WL 3146312 (D. Minn. Nov. 4, 2025); *Herrera Avila v. Bondi*, No. 0:25-cv-3741 (JRT), 2025 WL 2976539 (D. Minn. Oct. 21, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV- 02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK,

2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

In short, and as dozens of federal district courts including the District of Minnesota have uniformly agreed since July 2025, Respondents' basis for detaining individuals like Petitioner without a hearing is contrary to the clear and plain language of the Immigration and Nationality Act and thus is without legal basis. Because Petitioner is being held unlawfully, his habeas petition is likely to succeed on the merits, and accordingly the Court should find his primary factor weighs heavily in favor of granting a TRO in this case. *See Escalante*, 2025 WL 2212104, at *3 (given the likelihood of succeeding on the merits, petitioner had "done enough to justify an issuance of a restraining order preventing Respondents from removing him from the District of Minnesota.").

IV. The Public Interest Strongly Supports Fair Treatment for Detainees

The fourth *Dataphase* factor asks the Court to consider whether granting the injunctive relief would be in the public's interest. This factor weighs heavily in favor of Petitioner:

> [T]here is substantial public interest in ensuring that Petitioner can effectively present his claims, which implicate the practices and policies of a federal agency engaged in the detention of immigrants throughout the

> nation. Petitioner claims the government's recent reinterpretation of the applicable laws contradicts decades of precedent, policy and practice. The public has an interest in ensuring these claims are fairly presented on the merits and not obstructed by [Petitioner's] potential removal to a location where access to his attorneys would be impeded.

Escalante, 2025 WL 2212104, at *3.

The public interest is served by preventing the deprivation of constitutional rights and safety of residents of the United States, including noncitizens. *Ijeoma*, 2025 WL 3764899 at *2 (finding that this factor favored granting the injunction, in furtherance of "the interest of the public in ensuring due process, judicial review, and the rule of law.").

Our society depends on one branch of government being able to check the other, and for that to happen, the Executive Branch cannot be playing a speed game to evade accountability. There is a strong public interest in protecting and enforcing the very foundational concepts of our democracy.

CONCLUSION

Because Petitioner has met his burden to prove the need for a TRO, this request should be granted. As this Court continues to find, a noncitizen petitioner for habeas corpus relief should remain in this District, where this Court has jurisdiction until the case fully resolves and where petitioners may continue to access their attorneys.

Date: January 14, 2025

/s/ Kira A Kelley

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I, Kira Kelley, certify that Petitioner's Memorandum of Law in Support of Emergency Motion for Temporary Restraining Order conforms to the requirements of LR 7.1. This memorandum was prepared in 13-point font using Google Docs, whose word count function has been applied specifically to count all text aside from the case caption and signature block, and includes headings, footnotes, and quotations. The total count is 3335 words.

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