UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

KONG L.,
Petitioner,
v.

DAVID EASTERWOOD, Director of St. Paul Enforcement and Removal Operations, Immigration and Customs Enforcement; **MARKWAYNE MULLIN**, Secretary of the Department of Homeland Security; **DAVE ISAIS**, Jail Commander of the Sherburne County Jail; **DAVID J. VENTURELLA**, Acting Director, U.S. Immigration and Customs Enforcement; **TODD BLANCHE**, Attorney General of the United States,

Respondents.

Case No. 0:26-cv-03669-LMP-LIB

PETITIONER'S RENEWED EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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Petitioner Kong L. respectfully renews his request under Federal Rule of Civil Procedure 65 for a temporary restraining order and preliminary injunction preserving the status quo while the Court considers his timely Motion to Alter or Amend Judgment under Federal Rule of Civil Procedure 59(e). Petitioner asks only that, for the brief period necessary to adjudicate that motion, Respondents be prohibited from removing him from the United States or transferring him outside the District of Minnesota. Respondents may continue to detain Kong in Minnesota while the Court considers the Rule 59(e) motion.

The Court denied Kong's first post-judgment TRO request without prejudice for two identified reasons. The request "discuss[ed] none" of the four *Dataphase* factors, and "no Rule 59(e) motion [was] yet before the Court," leaving the Court without "the benefit

of any legal analysis" of Kong's proposed challenges. ECF No. 14 at 3-4. Those circumstances are now different. Kong has filed the Rule 59(e) motion as of right, as the Court directed, *id.* at 2-3, and this renewed motion addresses each factor the Court identified. The requested restraint is correspondingly narrow: it seeks no adjudication of removability and no immediate release at the TRO stage. It asks only that Kong remain physically present in Minnesota long enough for this Court to decide whether its judgment should stand.

That relief is particularly appropriate because the factual premise on which ICE revoked Kong's twenty-one-year Order of Supervision has already changed. ICE represented that a Lao travel document was valid through September 16, 2026 and that removal had been scheduled to occur "no later than" that date. ECF No. 8-6 at 1. September 16 passed without removal. The Court entered judgment on September 21 while Kong remained detained, ECF No. 10 at 3, and the present record identifies no replacement document, extension, new Lao authorization, or new removal date. If Respondents have since obtained new removal authority or arrangements, removal could occur before the Court has a meaningful opportunity to decide the Rule 59(e) motion. A short restraint preserves, rather than prejudges, that dispute.

Petitioner does not seek ex parte relief. Respondents are represented by counsel and will receive notice of this filing through CM/ECF. Given the risk that removal or out-of-district transfer could occur before ordinary briefing is complete, however, Petitioner respectfully requests immediate consideration on the existing record or an expedited hearing.

LEGAL STANDARD

"The standard for analyzing a motion for a temporary restraining order is the same as a motion for a preliminary injunction." *Tumey v. Mycroft AI, Inc.*, 27 F.4th 657, 665 (8th Cir. 2022). The Court considers: "(1) the likelihood of the movant's 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 that the relief would cause to the other litigants; and (4) the public interest." *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc). A TRO is an "extraordinary equitable remedy," and the movant "bears the burden of establishing its propriety." *Life Time Fitness, Inc. v. DeCelles*, 854 F. Supp. 2d 690, 694 (D. Minn. 2012). But the inquiry is flexible: the "central question" is whether the equities favor intervention "to preserve the status quo until the merits are determined." *Dataphase*, 640 F.2d at 113.

Judge Provinzino has applied that framework in this precise procedural setting. In *Domingo M.M. v. Shea*, No. 25-cv-2830 (LMP/ECW), 2025 WL 1937592, at *3-4 (D. Minn. July 15, 2025), the Court temporarily prohibited ICE from removing or transferring a detained habeas petitioner from this District while the merits were adjudicated. The Court emphasized that a short restraint served the purpose of preserving meaningful review and that, where removal could occur first, "failure to enter the TRO would be fatal to Petitioner's claims." *Id.* at *4. The same preservation principle applies here.

ARGUMENT

I. Kong has shown a sufficient likelihood of success on the Rule 59(e) motion.

Likelihood of success is the "most important" *Dataphase* consideration, but the movant need not prove at the TRO stage that victory is certain. *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013). The Eighth Circuit has explained that the inquiry is whether the claim presents at least a "fair ground for litigation." *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003). Kong satisfies that threshold several times over. His Rule 59(e) motion identifies discrete errors of law and fact in the judgment, each preserved before judgment, and the Court need find a fair likelihood on only one ground to preserve the status quo temporarily.

First, the Rule 59(e) motion identifies a substantial error in the treatment of 8 C.F.R. § 241.13. Section 241.13(i)(2) permits a return to custody when, "on account of changed circumstances," ICE itself "determines" that removal has become significantly likely in the reasonably foreseeable future. The First Circuit has stated the resulting judicial limitation in direct terms: "The district court erred by making the foreseeability determination itself." *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023). Here, the judgment inferred foreseeability from the existence of a purported travel document and a September 16 removal date. ECF No. 10 at 8-9. But the record contained no contemporaneous § 241.13(f) analysis, no evidence identifying the agency decisionmaker or the factors considered before revocation, and no actual Lao travel document. The Rule 59(e) motion therefore presents a substantial question whether evidence from which a court could infer foreseeability was improperly treated as proof that ICE made the individualized determination the regulation assigns to ICE.

The post-interview requirement is independently substantial. Section 241.13(i)(3) requires a "revocation custody review" that includes "an evaluation of any contested facts relevant to the revocation" and a determination whether the facts as found "warrant revocation and further denial of release." Kong did respond at the informal interview and submitted a written statement. ECF No. 8 ¶ 17; ECF No. 8-6 at 3. Yet the record contains no post-interview findings, no evaluation of his response, and no determination addressing "further denial of release." Judge Bryan, applying the same regulation to the same June 18 Lao travel-document development and the same September 16 expiration date, concluded that the absence of that review was independently significant and ordered release to the prior OSUP. *Khounxai P. v. Easterwood*, No. 26-cv-3748 (JMB/ECW), ECF No. 10 at 8-10 (D. Minn. Aug. 27, 2026). That close intra-District authority supplies, at minimum, a fair ground for reconsideration.

Second, the warrant issue presents a distinct question the judgment did not separately answer. The Court acknowledged that the 2026 I-205 "may not" have been validly issued because an SDDO signed it. ECF No. 10 at 5. The Court nevertheless relied on the 2005 I-205 because it had never been completed by physical removal. *Id.* at 5-6. But the First Circuit has warned that the removal order and the warrant "cannot be conflated" because the warrant "authorizes an arrest to effect removal." *Kong*, 62 F.4th at 619. Kong's Rule 59(e) motion therefore asks a narrower question than whether the old form remained uncompleted as a removal record: whether its arrest-and-custody authority remained indefinitely reusable after the original § 1231 custody, ICE's determination that removal could not be accomplished, and twenty-one years of supervised release. The regulation itself describes a later re-detention as a "return" to custody governed by §

241.13(i). 8 C.F.R. § 241.13(i)(2)-(3). That function-specific issue was not resolved merely by determining that physical removal never occurred.

Third, the judgment relied on a factual prediction that had already failed when judgment entered. ICE represented that the only travel document identified in the record expired September 16 and that removal would occur "no later than" that date. ECF No. 8-6 at 1. The September 21 Order nevertheless relied on that date as evidence of present foreseeability while also recognizing that Kong remained detained. ECF No. 10 at 3, 8-9. The current record contains no unexpired document, no extension, and no new removal date. That matters under *Zadvydas v. Davis*, which holds that § 1231(a)(6) permits detention only for the period "reasonably necessary to bring about" removal and "does not permit indefinite detention." 533 U.S. 678, 689 (2001). At minimum, the failure of the date on which the judgment expressly relied warrants examination before Kong is removed and the requested habeas remedy becomes practically unavailable.

The Rule 59(e) motion does not ask the Court to relitigate every issue in the original petition. It identifies preserved legal questions, a separate mandatory regulatory step that the record does not show occurred, and a material factual premise that had already expired before judgment. Those issues are sufficient to establish a meaningful likelihood of Rule 59(e) relief for purposes of a short status-quo order.

II. Removal before the Court decides the Rule 59(e) motion would create irreparable harm that cannot be repaired later.

The threatened harm is not an award of money that can be corrected after the fact. Kong seeks restoration to the supervised liberty he possessed in the United States before the challenged August 18 re-detention. If ICE removes him to Laos before the Court

decides whether that detention was lawfully imposed, the central habeas remedy - release in the United States under the preexisting OSUP - may become impossible or moot. The injury therefore lies not merely in the fact of removal, but in the destruction of the Court's ability to give meaningful relief on the custody dispute now before it.

This Court has already recognized that precise concern. In *Domingo M.M.*, the Government represented that removal could occur before merits briefing was complete. Judge Provinzino concluded that removal before adjudication "would be fatal to Petitioner's claims" and held that the irreparable-harm factor "weigh[ed] heavily" in favor of temporary relief. 2025 WL 1937592, at *4. The Court therefore prohibited both removal and transfer from the District while it decided the habeas case. *Id.* at *4-5. Other judges in this District have repeatedly entered the same type of preservation order in immigration habeas matters. *See, e.g.*, *Jama A.O. v. Bondi*, No. 26-cv-420 (DWF/ECW), ECF No. 6 at 3-5 (D. Minn. Jan. 18, 2026); *Liban G. v. Noem*, No. 26-cv-301 (SRN/ECW), ECF No. 8 at 3-6 (D. Minn. Jan. 16, 2026).

The risk is concrete, not abstract. ICE detained Kong because it intended to remove him, stated that it had secured a Lao travel document, and represented that removal would occur by September 16. ECF No. 8 ¶¶ 13-20; ECF No. 8-6 at 1. Although that document has now expired on the existing record, Respondents have not represented that removal efforts have ceased. To the contrary, the entire theory supporting continued custody is that removal remains foreseeable. If a replacement document or new flight is obtained, removal could occur before ordinary post-judgment briefing is complete. Kong cannot recover the lost opportunity for meaningful habeas review after he has been

placed outside the country and outside the supervised-release status he asks this Court to restore.

Out-of-district transfer presents a related risk. Kong is represented by Minnesota counsel and his post-judgment motion concerns the legality of custody imposed and maintained in this District. A short order maintaining him in Minnesota prevents unnecessary disruption of counsel access and preserves the Court's ability to act effectively if it alters the judgment. As Judge Provinzino explained in *Domingo M.M.*, requiring the petitioner to remain in this District while the case was adjudicated served "the interests of justice" where counsel was in Minnesota and the burden on Respondents was minimal. 2025 WL 1937592, at *5 n.1.

III. The balance of harms and the public interest strongly favor a short preservation order.

Where the Government opposes preliminary relief, the balance of harms and public-interest factors "merge." *Morehouse Enters., LLC v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 78 F.4th 1011, 1018 (8th Cir. 2023). Both favor Kong. The requested TRO does not order immediate release, vacate the removal order, or prevent ICE from litigating the Rule 59(e) motion. Respondents may continue to detain Kong in Minnesota. The order would do only one thing: postpone removal and out-of-district transfer long enough for the Court to decide whether its judgment should be altered.

The Government's corresponding injury is slight. In *Domingo M.M.*, Judge Provinzino found that the Government's harm from a short delay in removal was "minimal," particularly in light of expedited adjudication. 2025 WL 1937592, at *4. The balance is even clearer on this record because the only travel document the Government

produced evidence about expired September 16, and no current flight or replacement document appears in the record. If Respondents now possess such evidence, a fourteen-day preservation order still imposes only a limited delay. By contrast, removal before adjudication risks defeating the very relief Kong asks the Court to consider.

The public also has an interest in the orderly enforcement of valid removal orders. The requested order respects that interest because it leaves Kong's removal order untouched and seeks only a temporary pause. At the same time, "the public interest is served by ensuring that the Executive Branch follows the law." *Walter A. v. Berg*, No. 25-cv-4376 (PJS/DLM), 2025 WL 3296278, at *2 (D. Minn. Nov. 26, 2025). And habeas has historically served as a "critical check on the Executive, ensuring that it does not detain individuals except in accordance with law." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). The public interest is therefore served by preserving the Court's ability to decide the pending Rule 59(e) motion before potentially irreversible action occurs.

Nothing about that limited restraint prejudges the ultimate result. If the Court denies Rule 59(e) relief, Respondents retain whatever lawful removal authority they otherwise possess. If the Court grants relief, the TRO will have preserved the Court's ability to make that relief effective. That is the core function of temporary injunctive relief.

IV. No security should be required.

Rule 65(c) permits the Court to set security in an amount it considers proper. No bond is necessary here because the requested order causes no cognizable monetary injury and serves significant public interests. Judge Provinzino has waived security where a TRO restrains allegedly unlawful federal action and imposes no meaningful hardship on

the Government. *Mata Fuentes v. Olson*, No. 25-cv-4456 (LMP/ECW), ECF No. 15 at 16 (D. Minn. Dec. 9, 2025) (citing *Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016)). The same result is appropriate here.

CONCLUSION

The Court denied the prior TRO without prejudice because the *Dataphase* factors had not been briefed and the Rule 59(e) motion was not yet before it. Both deficiencies are now cured. Kong has presented substantial and preserved grounds for Rule 59(e) relief; removal before adjudication risks making meaningful habeas relief unavailable; the Government faces only a short delay while retaining physical custody in Minnesota; and the public interest favors allowing the Court to decide the legality of that custody before potentially irreversible removal occurs. Petitioner therefore respectfully requests that the Court immediately enjoin Respondents, and those acting in concert with them, from removing Kong from the United States or transferring him outside the District of Minnesota for fourteen days, or until further order of the Court, and consider the request for preliminary injunctive relief on an expedited basis. In the alternative, Petitioner requests an order requiring Respondents to provide the Court and counsel at least seventy-two hours' advance notice of any intended removal or out-of-district transfer while the Rule 59(e) motion remains pending.

Dated: September 22, 2026

Respectfully submitted,

/s/ Stacey R. Rogers
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CERTIFICATE OF COMPLIANCE

I, Stacey R. Rogers, certify that the foregoing Petitioner's Renewed Emergency Motion for Temporary Restraining Order and Preliminary Injunction complies with Local Rule 7.1(f).

I further certify that, in preparation of the foregoing memorandum, I used Microsoft Word, and that the word-processing program was applied to include all text, including headings, footnotes, and quotations, in the word count, except for those portions excluded by Local Rule 7.1(f)(1)(C).

The foregoing memorandum contains 2550 words.

Dated: September 22, 2026

/s/ Stacey R. Rogers
Stacey R. Rogers

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2026, I electronically filed the foregoing Petitioner's Renewed Emergency Motion for Temporary Restraining Order and Preliminary Injunction with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

Dated: September 22, 2026

/s/ Stacey R. Rogers
Stacey R. Rogers