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JOSEPH D. KIRCHNER
4440 Parklawn Avenue
Edina, MN 55435
Legal@lawsofexistence.com
Tel: (612) 552-2122

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOSEPH D. KIRCHNER,
Plaintiff,

Case No. 0:26-cv-00726-JWB-ECW

vs.

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER AND DECLARATORY
RELIEF**

KEITH ELLISON, in his official
capacity as Attorney General of the
State of Minnesota,
Defendants.

I. The Emergency

1. Two United States citizens have been killed by federal agents in Minneapolis in seventeen days. On January 7, 2026, ICE agents shot and killed Renee Nicole Good. On January 24, 2026, federal agents killed Alex Pretti—a lawful gun owner with a valid permit to carry who was **disarmed by agents before being shot in the back at point-blank range**. *See* Petition ¶¶ 51-56 (documenting video evidence showing agent removing Pretti's firearm from his waistband, then another agent executing the restrained, disarmed victim; one agent fled the scene; another clapped).

2. Vice President Vance has declared "absolute immunity" for federal agents—a legal doctrine that does not exist in American law. *See* Petition ¶¶ 44-46, 98-102

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(documenting that every recognized immunity is qualified; "absolute immunity" is a category error—not a wrong legal answer but a concept that structurally cannot exist under American constitutional law).

3. On the same day Alex Pretti was killed, Attorney General Bondi sent a letter to Governor Walz demanding voter rolls, welfare records, and sanctuary policy repeal—pairing violence with political demands. *See* Petition ¶¶ 79-84

(documenting the quid pro quo structure satisfying 18 U.S.C. § 2331(5)(B)(ii)).

4. These operations are conducted under the claimed authority of Supreme Court emergency stays that violate the express statutory limitations of 28 U.S.C. § 2101(f). *See* Memo I (comprehensive analysis of 80+ emergency applications); Petition ¶¶ 93-109 (shadow docket analysis).

5. This motion requires no discovery. The question is purely statutory: Does 28 U.S.C. § 2101(f) permit the Supreme Court to stay preliminary injunctions? The statute's text answers: No.

II. INCORPORATION BY REFERENCE

6. Plaintiff incorporates by reference the following filed documents as if fully set forth herein:

(a) Petition for Declaratory Judgment and Injunctive Relief (establishing standing at ¶¶ 2-26; documenting killings at ¶¶ 41-77; analyzing "absolute immunity" at ¶¶ 44-46, 98-102; analyzing domestic terrorism at ¶¶ 78-92; analyzing shadow docket at ¶¶ 93-109);

(b) Memorandum I: SCOTUS Ultra Vires Practice (comprehensive analysis of 28 U.S.C. § 2101(f) violations across 80+ emergency applications, including All Writs Act analysis);

(c) Memorandum L: Birthright Citizenship Cases (documenting coordinated constitutional subversion with $P < 10^{-9}$ statistical certainty);

(d) Exhibits A through I attached to the Petition.

III. THE STATUTORY QUESTION: 28 U.S.C. § 2101(f)

7. The statute is unambiguous:

"In any case in which the **final judgment or decree** of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court."

28 U.S.C. § 2101(f) (emphasis added).

8. The operative phrase is "**final judgment or decree**."

9. A preliminary injunction is not a final judgment. It is, by definition, preliminary. Congress knows the difference—28 U.S.C. § 1292(a)(1) establishes interlocutory appeals for injunctions precisely because they are *not* final judgments.

10. In 1923, the Supreme Court claimed authority to stay "interlocutory or final" judgments. *Magnum Import Co. v. Coty*, 262 U.S. 159, 162-63 (1923).

Congress responded by enacting § 2101(f), limiting stays to "final judgment or decree" only. The word "interlocutory" appears in related statutes where

1 Congress intended to grant such authority—its deliberate exclusion from §
2 2101(f) is dispositive. *See* Memo I, § III.

3 **11.** For 58 years (1925-1983), the Supreme Court did not stay district court
4 preliminary injunctions in major policy cases. The power the Court now
5 exercises routinely did not exist in practice because **it does not exist in law.**

6 **IV. THE ALL WRITS ACT DOES NOT AUTHORIZE WHAT § 2101(f)**
7 **PROHIBITS**

8 **12.** The government may argue that 28 U.S.C. § 1651 (All Writs Act) provides
9 independent authority for stays. This argument fails.

10 **13.** "Where a statute specifically addresses the particular issue at hand, it is that
11 authority, and not the All Writs Act, that is controlling." *Pennsylvania Bureau of*
12 *Correction v. U.S. Marshals Service*, 474 U.S. 34, 43 (1985).

13 **14.** Section 2101(f) specifically addresses stays pending certiorari. It limits such
14 stays to "final judgment or decree." The All Writs Act—a general gap-filling
15 statute—cannot override this specific limitation. *See* Memo I, § III.E.

16 **15.** If the All Writs Act could authorize what § 2101(f) prohibits, the specific
17 limitation would be meaningless. Congress does not enact meaningless statutes.
18 The specific governs the general.

V. The Shadow Docket Pattern

16. Since October 10, 2017, the Supreme Court has systematically stayed preliminary injunctions in immigration cases, despite lacking statutory authority to do so.

17. The foundational order in this pattern—*Trump v. International Refugee Assistance Project*, No. 16-1436 (June 26, 2017)—was vacated on October 10, 2017, when the underlying Executive Order was superseded. A vacated order has no precedential value. *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

18. Yet every subsequent shadow docket stay in immigration cases cites this vacated order as if it established binding precedent.

19. Supreme Court Rule 14(e)(iv) requires stay applications to include:

"If review is sought pursuant to 28 U.S.C. § 2101(f), the statutory provision believed to authorize the stay must be specifically identified."

20. Analysis of Solicitor General filings reveals **zero percent compliance** with this requirement in immigration stay applications. By contrast, private parties comply at approximately 71%. This disparity demonstrates that the government knows its stays lack statutory foundation. *See* Memo I, § IV.

1 **VI. NOEM v. VASQUEZ PERDOMO: THE PATTERN IN ACTION**

2 **21.** On September 8, 2025, the Supreme Court stayed a District Court order in
 3 *Noem v. Vasquez Perdomo*, No. 25A169, that had enjoined ICE from conducting
 4 stops based solely on: (1) apparent race or ethnicity; (2) speaking Spanish or
 5 English with an accent; (3) presence at particular locations; and (4) type of
 6 work.

7 **22.** The majority issued **no written opinion**. Three Justices dissented.

8 **23.** Justice Sotomayor's dissent documented the reality of federal enforcement
 9 operations:

10 "In early June, the Government launched immigration enforcement
 11 raids across Los Angeles... During the raids, teams of armed and
 12 masked agents pulled up to car washes, tow yards, farms, and parks
 13 and began seizing individuals on sight, **often before asking a single**
 14 **question.**"

15 *Noem v. Vasquez Perdomo*, No. 25A169, 606 U.S. ____ (Sept. 8, 2025)

16 (Sotomayor, J., dissenting).

17 **24.** The dissent documented violence against **United States citizens**:

- 18 • Jason Gavidia, a U.S. citizen, was pushed against a fence with his arms
- 19 twisted behind his back after affirming his citizenship three times;
- 20 • Jorge Viramontes, a dual U.S.-Mexican citizen, was grabbed, escorted to a
- 21 vehicle, and detained in a warehouse;
- 22 • Agents "jumped out of cars" and began "chasing" and "tackling"
- 23 individuals without identifying themselves.

24 **25.** After the District Court issued its protective order, Secretary Noem called
 25 the judge an "idiot" and declared that "none of our operations are going to

1 change." The CBP Chief announced his division would "turn and burn" and "go
2 even harder now."

3 **26.** Renee Nicole Good was killed in Minneapolis on January 7, 2026—four
4 months after *Noem v. Vasquez Perdomo*. Alex Pretti was killed on January 24,
5 2026. The shadow docket pattern has reached Minnesota.

6 **VII. STANDING**

7 **27.** Plaintiff's standing is established in detail at Petition ¶¶ 2-26 on four
8 independent grounds. In summary:

9 **A. Chilled First Amendment Rights**

10 **28.** Plaintiff cannot safely observe federal enforcement operations in Minnesota.
11 Good was killed for observing enforcement. Pretti was killed for lawful
12 presence near enforcement. Witnesses were subject to arrest. *See* Petition ¶¶ 6-
13 11, 61-63.

14 **29.** Unlike *Los Angeles v. Lyons*, 461 U.S. 95 (1983), Plaintiff faces ongoing,
15 systematic operations that federal officials have announced will continue and
16 intensify.

B. Direct Personal Injury

30. As set forth in the Affidavit attached to the Petition (Exhibit F), Plaintiff was subjected to unlawful detention and forced psychiatric commitment by Minneapolis police officers—conduct explicitly characterized as intended to "teach [him] a lesson." *See* Petition ¶¶ 12-14.

C. Coordinated Targeting

31. Plaintiff is the subject of network attacks specifically targeting his communications with Minnesota law enforcement while gathering evidence for this Petition. Network forensic evidence documents TCP RST injection with a 1-microsecond FIN-to-RST gap—timing physically impossible for legitimate traffic. *See* Petition ¶¶ 15-24; Exhibit G.

D. Taxpayer Standing

32. Plaintiff is a Minnesota taxpayer whose state tax dollars fund law enforcement cooperation with federal operations conducted under void authority.

1 **VIII. THIS COURT'S AUTHORITY TO INTERPRET FEDERAL**
2 **STATUTES**

3 **33.** Plaintiff does not ask this Court to "reverse" or "overrule" Supreme Court
4 orders. Plaintiff asks this Court to interpret a federal statute—28 U.S.C. §
5 2101(f)—and declare what it means.

6 **34.** Statutory interpretation is the core function of the federal judiciary. *Marbury*
7 *v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province
8 and duty of the judicial department to say what the law is.").

9 **35.** Three Supreme Court Justices have already concluded that the shadow
10 docket practice raises serious constitutional concerns. This Court is not alone in
11 questioning whether stays of preliminary injunctions have valid statutory
12 foundation.

13 **IX. DECLARATORY RELIEF REQUESTED**

14 Plaintiff requests this Court **DECLARE**:

15 **A. Regarding The Ultra Vires Shadow Docket Practice**

16 **36. DECLARE** that 28 U.S.C. § 2101(f) limits Supreme Court stays to cases
17 involving "final judgment or decree" only;

18 **37. DECLARE** that preliminary injunctions are not "final judgments or decrees"
19 within the meaning of § 2101(f);

1 **38. DECLARE** that Supreme Court stays of preliminary injunctions in
2 immigration cases exceed the Court's statutory authority;

3 **39. DECLARE** that the All Writs Act (28 U.S.C. § 1651) does not authorize
4 stays that § 2101(f) prohibits;

5 **40. DECLARE** that *Trump v. International Refugee Assistance Project*, No. 16-
6 1436 (June 26, 2017), was vacated on October 10, 2017, and therefore has no
7 precedential value for subsequent stay applications;

8 **41. DECLARE** that *Noem v. Vasquez Perdomo*, No. 25A169 (September 8,
9 2025), was issued without written explanation and pursuant to the same ultra
10 vires pattern.

11 **B. Regarding Constitutional Limits On Enforcement**

12 **42. DECLARE** that the Fourth Amendment prohibits the government from
13 using race, ethnicity, or national origin as the basis—or a significant factor—for
14 probable cause to search, seize, detain, or arrest any person;

15 **43. DECLARE** that the Equal Protection Clause of the Fourteenth Amendment
16 prohibits targeting any person for government action based on race, ethnicity, or
17 national origin;

18 **44. DECLARE** that "absolute immunity" for law enforcement officers, as
19 claimed by Vice President Vance, is not a recognized doctrine of American law,

1 and that any immunity determination requires judicial proceeding—not
2 executive pronouncement;

3 **45. DECLARE** that Minnesota state and local law enforcement officers have no
4 legal obligation to participate in federal enforcement operations that lack valid
5 constitutional and statutory authority.

6 **C. Regarding Minnesota's Authority**

7 **46. DECLARE** that under the Tenth Amendment and *Printz v. United States*,
8 521 U.S. 898 (1997), Minnesota may decline to participate in federal
9 enforcement operations;

10 **47. DECLARE** that the Attorney General of Minnesota has authority to advise
11 state and local law enforcement regarding constitutional limitations on their
12 participation in federal operations.

13 **X. Tro Factors Are Satisfied**

14 **A. Likelihood Of Success On The Merits**

15 **48.** The statutory question is not close. Section 2101(f) says "final judgment or
16 decree." A preliminary injunction is not final. The Supreme Court lacks
17 statutory authority to stay preliminary injunctions.

18 **49.** This is not a policy argument. It is statutory text.

1 **50.** Justice Sotomayor's dissent in *Noem v. Vasquez Perdomo* confirms the
2 constitutional analysis: "The Fourth Amendment protects every individual's
3 constitutional right to be 'free from arbitrary interference by law officers.'"

4 **B. Irreparable Harm**

5 **51.** Two people are dead. Federal agents continue operating in Minnesota under
6 claimed authority that violates express statutory limitations.

7 **52.** Irreparable harm is established when constitutional rights are violated. *Elrod*
8 *v. Burns*, 427 U.S. 347, 373 (1976).

9 **53.** Federal officials have announced they will "go even harder" despite judicial
10 orders. Secretary Noem called a federal judge an "idiot." This is not
11 hypothetical harm—it is ongoing defiance. *See* Petition ¶¶ 60, 210.

12 **C. Balance Of Equities**

13 **54.** Plaintiff asks this Court to declare what the law says. No party suffers harm
14 from judicial acknowledgment of statutory limitations that already exist.

15 **55.** Defendant Ellison is not harmed by a declaration clarifying his authority to
16 advise Minnesota law enforcement on constitutional limits.

1 **D. Public Interest**

2 **56.** The public interest lies in constitutional governance. *Maryland v. King*, 567
3 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers).

4 **57.** Two Minnesotans are dead. As Justice Sotomayor wrote: "We should not
5 have to live in a country where the Government can seize anyone who looks
6 Latino, speaks Spanish, and appears to work a low wage job."

7 **XI. WHY DECLARATORY RELIEF IS APPROPRIATE**

8 **58.** The Declaratory Judgment Act, 28 U.S.C. § 2201, authorizes federal courts
9 to "declare the rights and other legal relations of any interested party seeking
10 such declaration."

11 **59.** No discovery is needed. No factual disputes exist. The question is purely
12 legal: Does § 2101(f) authorize stays of preliminary injunctions? The statute's
13 text answers no.

14 **60.** Declaratory relief is particularly appropriate where parties need judicial
15 clarification to guide future conduct. *Steffel v. Thompson*, 415 U.S. 452 (1974).

16 **XII. WHY THE ATTORNEY GENERAL**

17 **61.** Plaintiff sues the Attorney General not as an adversary but as the state
18 official with authority to act on judicial declarations. *See* Petition ¶¶ 22-23, 149.

1 **62.** Under *Ex parte Young*, 209 U.S. 123 (1908), suits against state officials for
2 prospective relief are not barred by the Eleventh Amendment.

3 **63.** A declaration from this Court would enable the Attorney General to advise
4 Minnesota law enforcement with judicial authority behind his guidance.

5 **XIII. URGENCY**

6 **64.** Two deaths in seventeen days.

7 **65.** Federal agents continue operating in Minnesota under declared "absolute
8 immunity."

9 **66.** Secretary Noem and CBP officials have announced they will intensify
10 operations despite judicial orders.

11 **67.** Attorney General Bondi's January 24, 2026 letter—demanding voter rolls,
12 welfare records, and policy concessions on the same day Alex Pretti was
13 killed—demonstrates that federal enforcement is being paired with political
14 coercion. *See* Petition ¶¶ 79-84.

15 **68.** Every day without judicial clarity is a day Minnesota law enforcement
16 officers lack guidance on their constitutional obligations.

17 **69.** Plaintiff respectfully requests a hearing at the earliest possible date.

18 **XIV. CONCLUSION**

19 WHEREFORE, Plaintiff respectfully requests that this Court:

1 (a) Grant this Emergency Motion for Temporary Restraining Order;

2 (b) Issue the declaratory relief specified in Section IX;

3 (c) Set an expedited preliminary injunction hearing;

4 (d) Grant such other relief as the Court deems just and proper.

5 Respectfully submitted,

6 **Dated:** January 29, 2026

7 

8 **JOSEPH D. KIRCHNER**

9 Plaintiff, Pro Se

10 4440 Parklawn Avenue #203

11 Edina, MN 55435

12 Tel: (612) 552-2122

13 Email: legal@lawsofexistence.com