

No. A07-671

STATE OF MINNESOTA  
IN COURT OF APPEALS

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In the Matter of the Civil Commitment of:

Hayden Michael Richards

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APPELLANT'S BRIEF (INFORMAL) AND APPENDIX

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LEGAL ISSUES

1. Does a final Order of Deportation by the Department of Homeland Security preempt State Court jurisdiction in civil commitment proceedings?

Trial Court held: in the negative.

Is a person subject to a Deportation Order, who will never be released to the community prior to deportation, suitable for civil commitment?

Trial Court held: in the affirmative.

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May 9, 2007

Re: Commitment of Hayden Richards  
Appellate Court Case. No. A07-671

LETTER BRIEF TO COURT OF APPEALS

This appeal involves straightforward legal issues which the Court can review de novo, In re Daniels, 644 N.W.2d 495 (Minn. Ct. App.2002); Buchanan v. Dain Bosworth, 469 N.W.2d 508 (Minn. Ct. App. 1991).

Ramsey County petitioned to commit appellant Hayden Richards as a psychopathic personality and a sexually dangerous person in February of 2006. At that time Hayden Richards was in the custody of the Department of Corrections and also subject to a deportation Order dated 5/10/99 from the Department of Homeland Security (A-14). Shortly after the Petition was filed Richards was released from the Department of Corrections and, pursuant to Court Order, held in custody by the Department of Human Services until the Petition for Commitment was determined(A. 33). After two evidentiary hearings the trial Court entered it's final Order for Commitment on February 7, 2007. Hayden Richards is still in the custody of the Department of Human Services (at Moose Lake) and is still subject to the deportation order of 1999 ordering him removed to Trinidad. The Department of Homeland Security has filed a detainer with the Department of Human Services (R. Vol. III p.10)

Appellant's position throughout this litigation has been that commitment proceedings are inappropriate for persons subject to a deportation order and the trial court's jurisdiction is preempted by the deportation proceeding. This court's decision in Matter of Welfare of C.M.K, 552 N.W.2d 768 (Minn. App. 1996) appears to be controlling and dispositive. The decision was provided to the trial court (R. Volume III p.29) and relied upon by Richards as his defense to the commitment (A 1-3). C.M.K holds that a federal deportation proceeding preempts state court jurisdiction in a state juvenile court proceeding. This holding has been followed in other jurisdictions, In Re Zaim R., 822 NYS2d 368 (2006); GAO v. Jenifer, 991 F. Supp 887 (W.D. Mich. 1997). Petitioner Ramsey County provided no authority to the contrary and appellant is unaware of any such authority. There is no discernible reason for distinguishing a state juvenile proceeding from a state court civil commitment proceeding with regard to the preemption issue. The trial court did not mention C.M.K. in it's decision, but stated "this court has no jurisdiction over Respondent's immigration status or deportation" (R. A-54). Of course, this is a misstatement of the issue and the Court was asked to determine it's own jurisdiction in view of C.M.K.

In Reno v. Flores, 113 S. Ct. 1439, the U.S. Supreme Court, in speaking of immigration laws, stated "Over no conceivable subject is the legislative power of Congress more complete". Federal preemption occurs either expressly, by implication when Congress enacts comprehensive legislation, or when state law creates an obstacle to accomplishment of the purposes of Congress, Hines v. Davidowitz, 61 S. Ct. 399 (1941); Madeira v. Affordable Housing; 469 F.3d 219 (2nd Cir. 2006). Obviously, indefinite commitment "directly conflicts" with an order of removal to Trinidad, E.M.K. at p 771.

The Department of Homeland Security apparently has elected to defer Hayden Richards removal to Trinidad because of the commitment proceeding. It is conceivable that such a deferment could confer jurisdiction on a state court commitment proceeding if there was some authority in the applicable statutes or case laws for such a proposition. Appellant's inquiries to the Department of Homeland Security concerning the legal basis for postponing his removal are ignored (A-15). The applicable statute, 8 U.S.C.1231, requires removal within 90 days of the deportation order with some limited exceptions not applicable here. There is no general grant of discretion in the federal law whereby Homeland Security can avoid the mandates of the 8 U.S.C et seq. Federal court's

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have required the Attorney General to comply with the mandates of the statute, Zadvydas v. Davis 121 S. Ct. 2491 (2001) (deportee's mental illness does not excuse compliance with statute): Thai v. Ashcroft, 366 F.3d 790 (9th Cir.) (mentally ill and dangerous sex offender cannot be detained longer than provided in statute, and invalidating regulation allowing such "commitment" as contrary to the statute); Tran v. Gonzalez, 411 F. Supp. 658, (W.D. La. 2006) (Department cannot hold mentally ill and dangerous person deportee longer than statutory mandate).

Persons subject to a deportation order are not proper candidates for indefinite civil commitment even apart from the jurisdiction issue. The commitment statutes are designed to provide treatment and eventual release to the community, 245.474 subd. 3, 253.017 subd. 3. The Minnesota Sex Offender Program is designed for placement in the community after the last transition phase of the program consisting of partial hospitalization (R. VOL III, p 11-12). However, Hayden Richards cannot participate in the transition phase or be eventually released to the community (other than Trinidad) because of his deportee status (R. Vol III, p 21-22). He is

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apparently the only person in Minnesota who has been committed as a sex offender after a deportation order. (R. Vol III p. 22). Hayden Richards situation is simply not conducive to treatment because the Department of Homeland Security remains "free to assume physical custody and deport Mr. Richards whenever it decides to exercise its superior authority". (argument of Ramsey County A-10). It is because of this suspension in limbo that Hayden Richards wants to be deported, and has offered to enter in to a stay of commitment providing for his commitment if, for some unforeseeable reason, he is not deported or returns to the U.S. after deportation (R. Vol I, p.10-11).

Respectfully submitted



David Essling  
Attorney for Appellant  
Hayden Richards

STATE OF MINNESOTA  
COUNTY OF RAMSEY

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DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
Court File: MH-PR-06-84

In Re:

HAYDEN MICHAEL RICHARDS

MEMORANDUM OF LAW

Respondent

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Respondent Hayden Richards is currently subject to a final deportation Order from the Department of Home Land Security dated 5/10/1999. There is no dispute about this fact. There is also no dispute that Hayden Richards will not be released from custody of the State authorities unless he is turned over immediately to the immigration authorities for deportation to Trinidad. Although Dominic Belde of Ramsey County Adult Corrections testified that Richards will be on supervised release for approximately 10 years, it is undisputed that the the Department of Corrections intended to turn Richards over to the immigration authorities rather than supervise him in the community - Exhibit 8. The Department of Homeland Security has filed detainers with both the Department of Corrections and the Department of Human Services. Furthermore, the Department of Homeland Security is required to deport Richards rather than allow his release to commitment proceedings - see infra. Nevertheless, the County Attorney's office inexplicably seeks his commitment in this case, and, even more strangely, the Department of Homeland Security has seemingly concurred in this decision. This case is in many respects sui generis. Nevertheless it is entirely clear that the commitment of Hayden Richards is not appropriate for at least two reasons: 1) the Deportation Order preempts the jurisdiction of this Court, and 2) the Minnesota commitment act is not applicable to a person with the status of Hayden Richards.

#### PREEMPTION

There is one Minnesota case on this subject and it constitutes the law of Minnesota. In the Matter of the Welfare of C.M.K., 552 N.W.2d 768 (Minn. App. 1996) the foster parents of a juvenile alien sought to file a petition in Juvenile Court to find the child in need of protection or services. At the time of the attempted petition, the child was also in the process of a deportation hearing seeking his deportation to China. The Court held that the deportation

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proceeding preempted the State Court's jurisdiction and denied the foster parent's request. The case of Welfare of C.M.K appears, like this case, to be sui generis and has never been cited again. However, it seems to be "on all fours" with this case except insofar as this case presents an even stronger case for preemption. A petition seeking protection and services for a juvenile is obviously analagous to a commitment proceeding which seeks, at least purportedly, to obtain treatment for a mentally disordered person. There is no discernible reason why a juvenile court's jurisdiction should be preempted, but not the jurisdiction of the probate court in a commitment proceeding. In fact, this is a stronger case for preemption because Hayden Richards is not involved in proceedings in the immigration court at this point. The proceedings are over and final and he has been ordered deported. Furthermore, the federal immigration laws contain a specific exception for juveniles and the Court in Welfare of C.M.K., dealt at length with the question of why the federal exception for juveniles was not applicable. There is no exception in the immigration laws for state court commitment proceedings.

In Welfare of C.M.K the Minnesota Court relied primarily on two United States Supreme Court cases: Hines v. Davidowitz, 61 S. Ct. 399 (1941) and Fiallo v. Bell, 97 S.Ct. 1473 (1977). Those cases are obviously controlling and make clear that the federal government controls all aspects of the status of aliens. In Hines the Court stated, "The supremacy of the national power in the general field of foreign affairs, including powers over immigration, naturalization, and deportation is made clear by the Constitution . . . and has been given continuous recognition by this Court (emphasis added), 61 S.Ct. 401. In Fiallo the Court stated, "Our cases have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government political departments largely immune from judicial control" 97 S. Ct. 1478.

The general rule concerning preemption is that there is preemption if the state action conflicts with specific federal statutes or if federal law so thoroughly occupies the field as to require a reasonable inference that Congress had left no room for the state to act. Both of those tests dictate preemption here. The federal statutes require deportation within 90 days of a final deportation order with certain narrow exceptions, 8 U.S.C. 1231. One exception previously applicable to Hayden Richards is Section 8 U.S.C. Sec. 1231 (a)(4) which provides that the immigration service "may not

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remove an alien sentenced to imprisonment until the alien is released from imprisonment". Notably, the statute explicitly provides that "parole, supervised release, probation or possibility of arrest or further imprisonment is not a reason to defer removal". Thus, deferring removal of Hayden Richards for purposes of a civil commitment hearing is contrary to specific federal statutes. Furthermore, it is beyond peradventure that federal immigration laws "occupy the field" and that states cannot be individually deciding immigration matters. The immigration laws are contained in 8 U.S.C. et. seq. and are comprehensive. The Supreme court has held that immigration laws trump even contrary federal laws, Hoffman Plastic Compounds v. NLRB, 1225 S. Ct. 1275 (2002) (holding that awarding illegal aliens back pay required by federal labor laws "trivializes the immigration laws" and denying back pay), 1225 S. Ct. 1284). It is also important to note that the Supreme Court in Hoffman rejected the position of the immigration service which argued that back pay should be awarded. Therefore, the passive acquiescence of the immigration service here in the attempted commitment of Hayden is determinative of nothing in this case. The federal laws are clearly preemptive in this field and this Court lacks jurisdiction to commit Hayden Richards.

THE MINNESOTA COMMITMENT STATUTE FOR SEXUAL OFFENDERS  
DOES NOT APPLY TO PERSONS SUBJECT TO A DEPORTATION ORDER

Any visitor to a treatment facility operated by the Minnesota Sex Offender Program at Moose Lake or St. Peter will see a mission statement for the program posted in the waiting room. The mission statement says that the program is designed to prepare patients for entry into the community. When Wendy Loomans, a psychologist from the St. Peter facility, testified in this proceeding she stated that the entire purpose of the program is to allow entry of the patients back into the community. Minnesota statute 245.474 Sud. 3 provides as follows:

**Subd. 3. Transition to the community.** Regional treatment centers must plan for and assist clients in making a transition from regional treatment centers to other inpatient facilities or programs . . . regional treatment centers must also arrange for appropriate follow up care in the community during the transition period. . . so that the case manager can monitor and coordinate the transition and arrangements for the client's follow up care in the community.

Minnesota statute 253.017 provides as follows:

**253.017 Treatment provided by regional treatment centers**  
**Subdivision 1. Active psychiatric treatment.** The regional treatment center shall provide active psychiatric treatment according to contemporary professional standards. Treatment must be designed to:

- (3) strengthen family and community support; and
- (4) facilitate discharge, after care, and follow-up as patients return to the community.

Hayden Richards is not eligible for entry to the community because he is subject to a deportation order to Trinidad. The program is not suitable for a person in the position of Hayden Richards. The treatment program itself provides for a transition phase when patients are given passes and then, ultimately, a provisional discharge into the community. Neither the commitment act or the treatment program of the Minnesota Sex Offender Program can be applied properly to a person subject to a deportation order.

The Minnesota commitment act provides in 253B.03 Subd. 7. as follows:

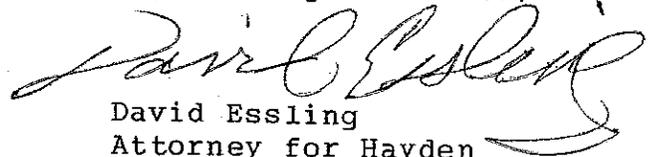
The treatment facility shall devise a written program plan for each person which describes in behavioral terms the case problems, the precise goals, including the period of time for treatment, and the specific measures to be employed. Each plan shall be reviewed at least quarterly to determine the progress toward the goals and to modify the program plan as necessary. The program plan shall be devised and reviewed with the designated agency and with the patient. The clinical record shall include the program planning and review. . .

Although Wendy Loomans testified that such a plan exists, Hayden Richards and the undersigned have not seen any such plan, nor is there such a plan in the treatment facility records in evidence in this proceeding. Hayden Richards has repeatedly requested any such plan, both before and after the latest hearing, with no result. We invite the Ramsey County Attorney's office to furnish us and the Court with a copy of the plan - together with a statement of when the plan was prepared. The absence of such a written plan is presumably because of Hayden Richard's status as an alien subject to a deportation order and constitutes another reason why his status makes him inappropriate for commitment.

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The Minnesota commitment act is concerned with persons "dangerous to the public", 253B.02, Subd. 17, "dangerous to other persons", 253B.02, Subd. 18b, and "likely to engage in acts of harmful sexual conduct", 253B.02 Sub. 18c. It is fair to say that the Minnesota legislature passing this act was concerned primarily about the people in Minnesota when they used this language. It is possible that the legislature was also concerned about people in neighboring states and maybe even the entire United States and the North American continent. It also reasonable to presume, however, that the act was not intended to protect the community in Trinidad, which is basically not any business of the Minnesota legislature. It is also safe to assume the commitment act was not intended to provide hundreds of thousands of public dollars for treatment (more likely millions) to people on en route to permanent residence in Trinidad. Hayden Richards is now a person to dealt with by Trinidad, as they see fit, and this state should not spend any more time, effort, or money on Hayden Richards. The petition to commit Hayden Richards should be denied

Respectfully submitted,



David Essling  
Attorney for Hayden  
Richards

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In Re the Civil Commitment of:

Hayden Michael Richards,

Respondent.

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**RAMSEY COUNTY'S  
MEMORANDUM OF LAW**

Hayden Michael Richards is a danger to every girl and woman in whatever community he is located. In order to provide the necessary treatment – which Mr. Richards has consistently refused – and to protect the public from this dangerous sexual predator, the Ramsey County Attorney's Office petitioned the Court for civil commitment of Mr. Richards as a sexual psychopathic personality and sexually dangerous person.

Mr. Richards attempts to again avoid treatment, and to gain a fresh opportunity to victimize innocent women, by claiming that a final deportation order preempts this Court's jurisdiction and makes him ineligible for civil commitment. Neither of these assertions hold water.

Federal immigration law does not preempt Minnesota's civil commitment system. Unlike the parties in In the Matter of the Welfare of C.M.K., 552 N.W.2d 768 (Minn. Ct. App. 1996), the Ramsey County Attorney's Office does not argue that civil commitment could prevent the federal government from exercising its authority to deport Mr. Richards whenever it elects to do so – the deportation order would

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supercede the civil commitment. Thus, this civil commitment proceeding is wholly unrelated to the pending deportation.

Additionally, a final deportation order does not exempt an individual from the civil commitment structure enacted by the Minnesota Legislature. First, nothing in the plain language of the Minnesota statute restricts "the public" that is to be protected to Minnesotans. Even if this broad term is narrowly construed to include only Minnesotans, however, the statute still applies. Mr. Richards remains in Minnesota, and neither the State of Minnesota, Ramsey County, nor Mr. Richards himself has any authority to force the federal government to enforce the final deportation order and return Mr. Richards to Trinidad. Until this happens, Mr. Richards remains a danger to Minnesota women and subject to Minnesota's laws.

#### FACTS

Mr. Richards has an extensive history of violent sexual attacks against strangers.

This criminal history includes:

- A conviction for First-Degree Criminal Sexual Conduct for the assault and rape of a sixteen-year-old girl walking home from work;
- Another First-Degree Criminal Sexual Conduct conviction for the assault and rape of a woman innocently walking down the street;
- A Kidnapping conviction for an attack on a sixteen-year-old girl walking to the bus stop—this attack was stopped only by the intervention of a "Good Samaritan"; and
- Another Kidnapping conviction for the attack, interrupted by a police officer, of an eighteen-year-old woman walking home from work.

Mr. Richards was imprisoned from 1997 until February 13, 2006, during which time he continually refused mandated sex offender treatment. Mr. Richards is currently on supervised release and remains subject to the court's jurisdiction until February 2016.

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On May 10, 1999, while Mr. Richards was imprisoned, the federal Immigration and Naturalization Service ("INS") entered a final deportation order against Mr. Richards. Wherever Mr. Richards has been since this order, the INS has filed a detainer. The INS, however, has not yet deported Mr. Richards – he remains in Minnesota and remains subject to deportation.

The Ramsey County Attorney's Office filed a petition seeking the civil commitment of Mr. Richards as a sexual psychopathic personality and sexually dangerous person on February 3, 2006.

### ARGUMENT

#### I. Federal Immigration Law Does Not Preempt Minnesota Civil Commitment Law.

##### A. Minnesota Law Does Not Require Preemption.

The Minnesota Court of Appeals addressed a question of involving federal preemption through immigration laws in the case In the Matter of the Welfare of C.M.K., 552 N.W.2d 768 (Minn. Ct. App. 1996). In that case, a minor child born in the People's Republic of China left his home in China, was illegally smuggled into the United States, and was eventually arrested by INS officials in New York City. Id. at 769. Because this child did not have an adult relative in the United States to whom he could be released pending the immigration proceedings, the INS released C.M.K. to a contracted foster care provider in Minnesota; the INS, however, retained legal custody of C.M.K. Id. After C.M.K. was found deportable and denied political asylum in the immigration proceedings, the foster care providers attempted to file a child protection

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petition in the Minnesota state courts. Id. The juvenile court held that it lacked jurisdiction in the matter. Id.

The Minnesota Court of Appeals affirmed this decision, holding that “[t]he factual and statutory bases on which the Wiles allege C.M.K. is in need of state court protection or services demonstrate that state court action here would be in direct conflict with the deportation proceedings.” Id. at 770 (emphasis added). This direct conflict was present because the petitioners were attempting to circumvent the deportation process to keep C.M.K. in the United States. Id. at 770-71. In reaching this conclusion, the court relied on two salient facts: (1) the INS retained legal custody of C.M.K.; and (2) the petition alleged that C.M.K. needed protection from potential abuse in China, not in Minnesota – an issue that was properly raised and rejected in the deportation and asylum proceedings. Id.

C.M.K. is not even closely analogous, let alone “on all fours,” with the present civil commitment proceedings. First, civil commitment would not directly conflict with the federal immigration proceedings. Unlike the child protection petition for C.M.K., which was intended to subvert the deportation process and keep the child in the United States, Ramsey County does not dispute INS’s supreme authority to deport Mr. Richards at any time – before, during, or after the commitment. Additionally, this proceeding is not based on events that have or may occur outside Minnesota. Under federal law, nobody – not Ramsey County, the State of Minnesota, nor Mr. Richards – can force the INS to deport any individual. See 8 U.S.C. § 1231(a)(4)(D) (2000). Ramsey County filed this civil commitment petition based on Mr. Richards’ past conduct within

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Minnesota and on the threat he continues to pose to Minnesota women until he is deported. This exercise of state authority does not violate the Minnesota Court of Appeals decision in C.M.K.

**B. Federal Law Does Not Require Preemption.**

Federal law preempts state laws where state action directly conflicts with the federal statute or where federal regulation occupies the entire field – “where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation . . . , states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.” Hines v. Davidowitz, 312 U.S. 52, 66-67 (1941).

As discussed above, the civil commitment of Mr. Richards would not directly conflict with federal immigration law because INS would remain free to assume physical custody and deport Mr. Richards whenever it decides to exercise its superior authority – this proceeding does not attempt to subvert the separate deportation proceedings. The timing of this deportation is controlled exclusively by the INS – not by Ramsey County, the State of Minnesota, or Mr. Richards.

Moreover, the applicable “field” is not immigration, but is instead the civil commitment of sexual psychopathic personalities and sexually dangerous persons. Nothing in the federal immigration laws addresses this field.

The State of Minnesota is entitled to enforce and implement its civil commitment system, based upon its sovereign authority, in connection with any individual within the state as long as that exercise does not interfere with the power of the federal

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government over immigration policy. Because committing a dangerous sexual predator, until the INS chooses to deport that individual, does not interfere with the exercise of the federal government's supreme authority, there is not preemption.

## II. Mr. Richards Is Eligible for Civil Commitment under Minnesota Law.

Under Minnesota law, individuals with sexual psychopathic personalities and sexually dangerous persons are subject to civil commitment. Minn. Stat. § 253B.18;

Minn. Stat. § 253B.185. For purposes of this statute:

"Sexual psychopathic personality" means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253B.02 subd. 18b. A sexually dangerous person is an individual who:

(1) has engaged in a course of ["sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another"]; (2) has manifested a sexual, personality, or other mental disorder; and (3) as a result, is likely to engage in acts of ["sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another"].

Minn. Stat. § 253B.02 subd. 18c (quoting subd. 7a). If a court finds, by clear and convincing evidence, that the elements of this definition are met, that court must commit the individual unless "the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.185.

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The pending deportation order has no effect on the elements for civil commitment. First, the definitions of sexual psychopathic personality and sexually dangerous person do not limit the threatened future harm to Minnesotans – they use the general terms “other persons” and “another.” Mr. Richards is a danger to the people of whatever community he is located in. Even if this Court interprets the statute to limit the word “another” to Minnesotans or Americans, however, the facts remains that Mr. Richards will remain in Minnesota until the INS chooses to deport him, and thus remains a danger to Minnesotans until that federal action occurs.

Deportation is also not a less restrictive alternative because it fails to address one of the two critical factors – Mr. Richards’ treatment needs. Although Mr. Richards’ eventual deportation may adequately address the requirements of Minnesota safety, it will not address his treatment needs.

Finally, the treatment programs for indefinitely committed individuals can adequately address Mr. Richards’ treatment needs. In these programs, treating physicians carefully tailor a treatment program for each patient. These services may thus be tailored to address any concerns regarding Mr. Richards’ status as a person subject to a final deportation order, and to aid Mr. Richards’s transition to release, whenever his treatment needs require or the INS chooses to exercise its authority under federal law to deport him.

Deportation does not affect analysis of the statutory elements for civil commitment as a person with a sexual psychopathic personality or as a sexually dangerous person, is not a less restrictive treatment alternative, and will not interfere

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with the delivery of an effective and personalized treatment program. Mr. Richards thus meets the statutory requirements for commitment and should be committed pursuant to Minnesota law.

SUSAN GAERTNER  
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Dated: November 13, 2008

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ATTORNEY FOR PLAINTIFF

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).