

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

**TAHER MOHAMMED TAHER
HASAN,**

Petitioner-Plaintiff,

v.

KRISTI NOEM, et al.

Respondents-Defendants.

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Case No. 4:25-cv-3990

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Petitioner-Plaintiff Taher Mohammed Taher Hasan (“Mr. Hasan” or “Petitioner”), by and through the undersigned counsel, hereby moves the court for a preliminary injunction ordering his release from Respondents-Defendants’ (“Respondents”) custody during the pendency of this action.

TABLE OF CONTENTS

INTRODUCTION & FACTUAL BACKGROUND	1
LEGAL STANDARD.....	3
ARGUMENT	4
I. Mr. Hasan is Likely to Succeed on the Merits.....	4
A. Mr. Hasan’s Indefinite Detention Violates the Fifth Amendment.	4
B. Respondents-Defendants’ Attempt to Deport Mr. Hasan to Israel Violates the INA as interpreted by the Supreme Court in Jama v. ICE.	6
C. Respondents-Defendants’ Attempt to Deport Mr. Hasan to Israel Without Providing Him an Opportunity to Prove a Fear of Removal to Israel or Palestine Violates His Statutory Right to Apply for Withholding of Removal.....	9
II. Mr. Hasan Will Suffer Irreparable Harm in the Absence of a Preliminary Injunction.....	10
III. The Balance of Equities Weigh Heavily in Mr. Hasan’s Favor and a Preliminary Injunction is in the Public Interest.	12
CONCLUSION.....	12

TABLE OF AUTHORITIES

Cases

<i>Ariz. Dream Act Coal. v. Brewer</i> , 757 F.3d 1053 (9th Cir. 2014)	12
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	10
<i>Christian Legal Soc’y v. Walker</i> , 453 F.3d 853 (7th Cir. 2006)	12
<i>Clark v. Martinez</i> , 543 U.S. 371 (2005)	5
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	10
<i>Hernandez v. Sessions</i> , 872 F.3d 976 (9th Cir. 2017)	10-11
<i>Jama v. ICE</i> , 543 U.S. 335 (2005)	3, 6, 8, 9
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	4, 12
<i>Opulent Life Church v. City of Holly Spring, Miss</i> , 697 F.3d 279 (5th Cir. 2012)	10-12
<i>Valentine v. Collier</i> , 956 F.3d 797 (5th Cir. 2020)	3-4

Velasco Lopez v. Decker,

928 F.3d 842 (2d Cir. 2020).....10

Winter v. Nat. Res. Def. Council, Inc.,

555 U.S. 7 (2008)3, 12

Zadvydas v. Davis,

533 U.S. 678 (2001)3-5

Statutes

8 U.S.C. § 12313

8 U.S.C. § 1231(b)(2)(A)6

8 U.S.C. § 1231(b)(2)(C)(i).....6

8 U.S.C. § 1231(b)(2)(C)(ii)-(iii)6

8 U.S.C. § 1231(b)(2)(E)(i).....7, 8

8 U.S.C. §1231(b)(2)(D)7

8 U.S.C. § 1231(b)(3)..9-10

8 U.S.C. § 1101(a)(14)8

Other Authorities

8 FAM 403.4-49

Treatises

Charles Alan Wright & Arthur R. Miller, *11A Federal Practice and Procedure* §

2948.1 (3d ed. 1998).....10

INTRODUCTION & FACTUAL BACKGROUND

Petitioner-Plaintiff Taher Mohammed Taher Hasan (“Mr. Hasan”) is a 22-year-old who was born in Nablus, in the West Bank of the Palestinian Territories, in 2002. He was lawfully admitted to the United States on a visitor’s visa on or about September 2023, at the age of twenty. On or about March 2024, Mr. Hasan was working as a locksmith in Texas and called to assist a client who was locked out of their car at a military base near Waco. Mr. Hasan does not recall which base but Form I-213, Record of Deportable Non-citizen, indicates it was Fort Cavazos in Killeen, Texas. ECF No. 1-1 at 5. Upon attempting to lawfully enter the army base through the official checkpoint, he was arrested for trespassing (but was never prosecuted), detained, and transferred to the custody of immigration authorities. He was served with a Notice to Appear, which asserted he was removable for overstaying his visa and placed into immigration proceedings before an immigration judge, who ordered him removed on September 23, 2024. At the time of this filing, he has been detained by ICE for 16 months total and 10 months since his removal order became final in October 2024.

During Mr. Hasan’s lengthy confinement, ICE has proved unable to secure travel documents that would permit his removal. During his detention he has been subjected to inhumane and degrading conditions of confinement. Most concerning, despite his young age and lack of any criminal convictions, Mr. Hasan has been segregated from the general population and placed in a high security holding area

where he is in constant, imminent danger of being physically assaulted or abused by cellmates with long criminal records.

On or about June 6, 2025, Mr. Hasan and roughly 25 other Palestinian detainees were taken out of Joe Corley Processing Center, placed in hand and leg restraints and transported to Dallas, where they were held in a detention center close to an unknown airport. At the airport, individuals who were wearing military fatigues and carrying weapons guarded the detainees. At this time, Mr. Hasan was protected from removal by Deferred Enforced Departure.

Mr. Hasan and other detainees were taken near an airplane that had the word “Oman” on the fuselage. The plane’s engines were running. The Palestinian detainees repeatedly asked ICE officers whether they were being removed—and if so, to where—but officers refused to answer. At one point in the transportation process, Mr. Hasan overheard one ICE officer say to another that the Palestinian detainees were being deported to Israel, even though this was not the country designated by the Respondents-Defendants in the Notice to Appear. ECF No. 1-1 at 1. Mr. Hasan heard another Palestinian detainee tell an ICE officer that he was afraid of being sent to Israel given the risk of death at the hands of the Israeli military or mistreatment by its government and laws. Mr. Hasan heard the officer tell the detainee he did not care about the detainee’s fear.

ICE officers then began the boarding process. Individuals from Africa and Latin America boarded first, and when it came time for the Palestinians to board, ICE officers stopped them and told them, “You aren’t going.” Mr. Hasan and the other

Palestinian detainees were then returned to ICE detention facilities. ICE has made no physical attempt to remove him since.

This Court should order Mr. Hasan's immediate release because neither the INA nor the Constitution tolerates indefinite detention. All efforts to remove Mr. Hasan to any country have failed, and because "there is no significant likelihood of removal in the reasonably foreseeable future," he must be released. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Respondents-Defendants may seek to evade this result by attempting to remove Mr. Hasan to a country not authorized by statute—contrary to *Jama v. ICE*, 543 U.S. 335 (2005), and the four-step removal framework set forth in 8 U.S.C. § 1231. To prevent such unlawful action, this Court should not only order Mr. Hasan's release but also stay his removal unless and until the government identifies a statutorily authorized country of removal, demonstrates that removal is significantly likely, and provides Mr. Hasan an opportunity to present any claim of fear of persecution or torture with respect to that country before removal is executed.

LEGAL STANDARD

Mr. Hasan is entitled to a preliminary injunction if he establishes that he is "likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "The first two factors are the most critical." *Valentine v. Collier*, 956 F.3d

797, 801 (5th Cir. 2020). The latter two “factors merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. Mr. Hasan is Likely to Succeed on the Merits.

A. Mr. Hasan’s Indefinite Detention Violates the Fifth Amendment.

Mr. Hasan is likely to succeed on the merits of his claim that his continued detention violates the Fifth Amendment Due Process Clause.

The “Due Process Clause applies to all persons within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.*

Detention for non-criminal purposes is only allowed “in narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal quotations and citations omitted). With respect to immigration detention, the Supreme Court has recognized two special justifications: preventing flight risk and preventing danger to the community. *See id.* “[B]y definition, the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best.” *Id.*

The Supreme Court has held that the Immigration and Nationality Act (“INA”) “limits a[non-citizen’s] post-removal detention period to a period reasonably

necessary to bring about that [non-citizen's] removal from the United States. It does not permit indefinite detention." *Id.* at 689; *see id.* at 699 ("Whether a set of circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority.").

"A [non-citizen] may be held in confinement *until* it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701 (emphasis added). "[I]f removal is not reasonably foreseeable, the [habeas] court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699. This rule applies to both once-lawful permanent residents and inadmissible non-citizens. *See Clark v. Martinez*, 543 U.S. 371, 378 (2005).

Mr. Hasan has been detained for sixteen months total and ten months since his removal order became final on October 23, 2024, far longer than the *Zadvydas* six-month limit. ECF No. 1 ¶ 18. During this time, Respondents-Defendants attempted to remove Mr. Hasan and failed. ECF No. 1 ¶¶ 26-32.

Moreover, Respondents-Defendants will not be able to remove Mr. Hasan promptly to any country, because they have violated the statutory framework governing the removal process. Upon information and belief, Respondents-Defendants have not asked Mr. Hasan to apply for travel documents for any country. ECF No. 1 ¶ 16. Respondents-Defendants have no legal authority to remove Mr. Hasan to Israel or any third country because they have not yet satisfied steps one through three of the *Jama* four-step test, which requires they follow the steps laid

out in 8 U.S.C. § 1231(b)(2) sequentially. See ECF No. 1 ¶¶ 34-39; *supra* Section I.B. Until they follow the correct process, they cannot remove Mr. Hasan to Israel or any third country. For all the aforementioned reasons, there is no significant likelihood of lawful removal in the reasonably foreseeable future. Mr. Hasan should therefore be released forthwith.

B. Respondents-Defendants' Attempt to Deport Mr. Hasan to Israel Violates the INA as interpreted by the Supreme Court in Jama v. ICE.

Respondents-Defendants' attempt to remove Mr. Hasan to Israel on or about June 2025 violates the INA because it was an out-of-order removal attempt in violation 8 U.S.C. § 1231(b)(2).

The INA “provides four *consecutive* removal commands.” *Jama v. ICE*, 543 U.S. at 341 (emphasis added). These commands must be followed in the order they are listed in the statute, and the government may not skip steps in the process. *Id.* The four steps are as follows:

First, “[a non-citizen] shall be removed to the country of his choice” pursuant to 8 U.S.C. § 1231(b)(2)(A) unless the non-citizen “fails to designate a country promptly,” § 1231(b)(2)(C)(i), or if the country is unwilling to accept the non-citizen, does not indicate its willingness to accept the non-citizen within 30 days of inquiry, or the Attorney General determines that removing the non-citizen to the country “is prejudicial to the United States.” § 1231(b)(2)(C)(ii)-(iii). In Mr. Hasan’s case, this country would be Palestine. ECF No. 1-1 at 1.

Second, if no country satisfied Step One, the non-citizen “shall” be removed “to a country of which the [non-citizen] is a subject, national, or citizen” unless the

country is unwilling to accept the non-citizen or does not indicate whether it will accept the non-citizen within 30 days of inquiry, or an otherwise reasonable period. § 1231(b)(2)(D)(i)-(ii). The only country that satisfies Step Two is likewise Palestine.

Third, if no country satisfies Steps One or Two, the Attorney General “shall” remove the non-citizen to “any of the following countries: (i) [t]he country from which the [non-citizen] was admitted to the United States[,] (ii) [t]he country in which is located the foreign port from which the [non-citizen] left for the United States or for a foreign territory contiguous to the United States[,] (iii) [a] country in which the [non-citizen] resided before the [non-citizen] entered the country from which the [non-citizen] entered the United States[,] (iv) [t]he country in which the [non-citizen] was born[,] (v) [t]he country that had sovereignty over the [non-citizen’s] birthplace when the [non-citizen] was born[or], (vi) [t]he country in which the [non-citizen’s] birthplace is located when the [non-citizen] is ordered removed.” § 1231(b)(2)(E)(i)-(vi). Respondents-Defendants have not indicated that it has attempted removal to any country in this third category, namely Jordan and the United Arab Emirates, which are the countries through which Mr. Hasan traveled en route to the United States in September 2023.

Finally, if no country satisfies these three steps, and if it is “impracticable, inadvisable or impossible” to remove the non-citizen to any country in Step Three, the Attorney General may remove the non-citizen to “another country whose government will accept the [non-citizen] into that country.” § 1231(b)(2)(E)(vii). Israel would qualify under this fourth and final step.

Respondents-Defendants acknowledge Mr. Hasan is “stateless.” ECF No. 1-1 at 4. Mr. Hasan designated Palestine as the country of removal, and Respondents-Defendants noted Palestine as the country of removal in the Notice to Appear. See ECF No. 1-1 at 1. Palestine is therefore the only country to which Mr. Hasan can be removed under Step One of the *Jama* framework. Respondents-Defendants have not provided any evidence to suggest they communicated with Palestine as they were obligated to do under Step One of the four-step *Jama* test, and any efforts to remove him to any country to which he may be removable under Steps Two through Four are therefore unlawful.

Any efforts to remove Mr. Hasan to Israel would also be unlawful for the additional reason that there are countries to which Respondents-Defendants must first try to remove him under Step Three, namely, Jordan and the United Arab Emirates. § 1231(b)(2)(E)(i). Under the *Jama* analysis, these two countries must be contacted *before* Respondents-Defendants may attempt to remove Mr. Hasan to Israel.

Removing Mr. Hasan to Israel en route to Palestine would not cure this statutory violation because Palestine qualifies as a separate “foreign state” from Israel under 8 U.S.C. § 1101(a)(14), which defines “country” or “foreign state” as follows: “The term ‘foreign state’ includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.” The United States treats the Palestinian Territories as a “foreign state” for visa purposes, granting travel documents to

individuals in the West Bank and to individuals in Gaza if “verified by the Palestinian Authority in the West Bank.”¹ Additionally, the Foreign Affairs Manual (“FAM”) acknowledges that the United States government does not recognize Israeli sovereignty over the West Bank: “U.S. policy recognizes that Jerusalem, the West Bank, and the Gaza Strip are territories whose final status must be determined by negotiations.” 8 FAM 403.4-4. The Foreign Affairs Manual makes clear that residents of the West Bank are not to be issued travel documents from Israel. *Id.* (“Do not list Israel for persons born in . . . the West Bank.”). As such, the Palestine Territories and Israel are considered “separate foreign states” under the INA. Respondents-Defendants cannot simply remove Mr. Hasan to Israel as a transit point to Palestine as an end-run around the *Jama* process.

C. Respondents-Defendants’ Attempt to Deport Mr. Hasan to Israel Without Providing Him an Opportunity to Prove a Fear of Removal to Israel or Palestine Violates His Statutory Right to Apply for Withholding of Removal.

Respondents-Defendants attempt to deport Mr. Hasan to Israel violated his right to apply for statutory withholding of removal under 8 U.S.C. § 1231(b)(3). Under the INA, Respondents-Defendants “may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.” § 1231(b)(3)(A). At no point in June 2025 did Respondents-Defendants ask Mr. Hasan whether he feared being removed to Israel.

¹ See U.S. Dep’t of State, *U.S. Visa Reciprocity and Civil Documents by Country: Israel, Jerusalem, the West Bank and Gaza*, available at: <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Israel.html>.

When Mr. Hasan was in removal proceedings, he was not given the chance to indicate a fear of returning to Israel, only to Palestine. Respondents-Defendants attempt to put Mr. Hasan on a plane and remove him to Israel was therefore in violation of § 1231(b)(3)(A).

II. Mr. Hasan Will Suffer Irreparable Harm in the Absence of a Preliminary Injunction.

Mr. Hasan is suffering irreparable harm while the government detains him without authority. The violation of an individual's constitutional rights is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). "The loss of [constitutional] freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Opulent Life Church v. City of Holly Spring, Miss*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod*, 427 U.S. at 373); see also Charles Alan Wright & Arthur R. Miller, *11A Federal Practice and Procedure* § 2948.1 (3d ed. 1998) ("When an alleged deprivation of a constitutional right is involved, . . . most courts hold that no further showing of irreparable injury is necessary.").

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); see also *Velasco Lopez v. Decker*, 928 F.3d 842, 850 (2d Cir. 2020) ("[t]he deprivation [] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others

outside normal visiting hours. They use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone.”); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing in “concrete terms the irreparable harm imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on [persons in detention] and their families as a result of detention, and the collateral harms to children of [persons in detention] whose parents are detained”).

This harm cannot be cured by removing Mr. Hasan to Israel because if he is removed to Israel he faces a high likelihood of death, unlawful arrest, torture or persecution at the hands of the Israeli military. Mr. Hasan’s family in the West Bank has been targeted by the Israeli military, which has engaged in punitive raids on Mr. Hasan’s hometown, has killed or injured a number of his relatives, and ransacked his family’s home. See ECF No. 1 ¶ 28.

On or about October 2024, the Israeli military exploded grenades in the family’s olive grove, destroying trees and depriving the family of their livelihood. On or about December 2024, one of his cousins, aged 44, was killed by an Israeli soldier who shot him as he was smoking a cigarette at the window of his family home despite his non-combatant status. *Id.* Around the same time, another of Mr. Hasan’s cousins, a 12-year-old girl, was shot in the head by an Israeli soldier while in the car en route to a medical appointment. *Id.* Also, on or about December 2024, members of the Israeli military entered Mr. Hasan’s family home in Nablus, beating his father with

their fists and his 17-year-old brother with rifle butts. *Id.* Israeli soldiers also ransacked the house, smashing tables, the television and other furniture. *Id.*

Mr. Hasan's detention and/or removal to Israel will cause irreparable harm absent a preliminary injunction here.

III. The Balance of Equities Weigh Heavily in Mr. Hasan's Favor and a Preliminary Injunction is in the Public Interest.

The third and fourth factors tip strongly in Mr. Hasan's favor. Where, as here, the government is a party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken*, 556 U.S. at 435.

When assessing whether a preliminary injunction is warranted, the Court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24 (internal quotation omitted). “[I]njunctions protecting [constitutional] freedoms are always in the public interest.” *Opulent Life Church*, 697 F.3d at 298 (quoting *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006); see also *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (“[W]e have held that plaintiffs who are able to establish a likelihood that [a] policy violates the U.S. Constitution . . . have also established that both the public interest and the balance of equities favor a preliminary injunction.”) (cleaned up).

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Hasan's motion for a preliminary injunction ordering his immediate release out of Respondents-

Defendants' unlawful custody. The undersigned respectfully request oral argument pursuant to Local Rule 7.5, preferably by video conference or telephone.

Dated: August 22, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2025, counsel for Petitioner-Plaintiff provided a copy of this Motion for a Preliminary Injunction by email to the following individuals:

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