Azam Shaheem
Alien Number:A[redacted]
Eloy Detention Center

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Azam Shaheem , Petitioner, v. Warden of Eloy Detention Center; John Cantu, Director of Phoenix Field Office for the U.S. Immigration and Customs Enforcement and Removal Operations ("ICE/ERO") Field Office ; Kristi Noem, in her official capacity, Secretary of the U.S. Department of Homeland Security; Todd Lyons, in his official capacity, Acting Director U.S. Immigration and Customs Enforcement; and Pamela Bondi, in her capacity, U.S. Attorney General of the United States; Respondents.	Case No. **CV26-01925-PHX-SMB--MTM** **PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTINON**

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Petitioner, Azam Shaheem, respectfully moves this Court for a Temporary Restraining Order ("TRO") pursuant to Federal Rule of Civil Procedure 65 (b) and All Writs Act, 28 U.S.C. § 1651(a).

Petitioner respectfully requests that this Court issue a preliminary injunction (1) enjoining Respondents from continuing his unlawful detention, and (2) prohibiting Respondents from removing him to any third country without first providing constitutionally adequate procedures. In support, Petitioner incorporates the factual record and arguments set forth in his Petition for Writ of Habeas Corpus under 28 U.S.C. §2241.

Petitioner, Azam Shaheem, is a non-citizen currently detained by Respondents pending immigration removal proceedings. Petitioner remains unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") at the Eloy Detention Center, even though he prevailed in his immigration case on October 3, 2025, when an Immigration Judge ("IJ") granted him asylum under INA § 208, 8 U.S.C. § 1158.

Petitioner has been detained in immigration custody for since January 23, 2025, almost fourteen (14) months even though no neutral decisionmaker has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk. Petitioner was granted asylum under INA § 208, 8 U.S.C. § 1158 on October 3, 2025. Respondents timely appealed on October 29, 2025; Petitioner remains in pending removal proceedings before the BIA and is detained, if at all, under 8 U.S.C. § 1226(a), not § 1231. An Immigration Judge granted Petitioner asylum, and the Department of Homeland Security filed a timely appeal to the Board of Immigration Appeals. Because the appeal remains pending, removal proceedings are ongoing and no administratively final order of removal exists. See 8 U.S.C. § 1101(a)(47)(B).

Detention therefore falls under § 1226(a), which governs custody "pending a decision on whether the alien is to be removed," rather than § 1231, which applies only after a final removal order. Nor does § 1225 apply, as Petitioner is no longer in an admission or expedited-removal

posture following the Immigration Judge's grant of asylum. Accordingly, Petitioner's continued detention is discretionary detention under § 1226(a).

Petitioner's continued detention violates both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. Once Petitioner was granted asylum, he was no longer subject to removal, and DHS's detention authority under INA §§ 236 and 241 ceased to exist. Petitioner is entitled to a bond hearing or immediate release because he is subject to the discretionary detention provision of 8 U.S.C. § 1226(a). Respondents cannot remove Petitioner to his home country or to any third country because Petitioner has been granted asylum. Absent a bond hearing or this Court's intervention, Petitioner's detention will be effectively indefinite, despite the fact that removal is not reasonably foreseeable.

Petitioner's prolonged detention without a hearing on danger and flight risk violates the Due Process Clause of the Fifth Amendment.

II. MEMORADUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

LEGAL STANDARD

A temporary restraining order is an extraordinary remedy intended to preserve the status quo and ensure the Court's jurisdiction is not defeated before the merits are adjudicated. The familiar four-factor test applies: (1) likelihood of success on the merits; (2) irreparable harm absent relief; (3) balance of equities; and (4) the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The first two factors are the most critical, and when the Government is the opposing party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

In addition, the All Writs Act, 28 U.S.C. § 1651(a), provides an independent basis for interim relief where necessary to protect the Court's jurisdiction. See *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *9 (D. Colo. Aug. 8, 2025) cf. *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977) (All Writs Act authorizes orders "necessary ot appropriate in aid of" jurisdiction). Courts have consistently recognized that they possess jurisdiction to enjoin both transfer and removal while a habeas petition is pending, in order to protect their ability to decide the case. *D.B.U. v. Trump*, No. 1:25-CV-01163-CNS, 2025 WL 1304288, at *5 (D. Colo. May 6, 2025). In *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *9 (D. Colo. Aug. 8, 2025), a district court in the 10th Circuit invoked the All Writs Act, 28 USS.C. § 1651, to prohibit ICE from removing the petitioner from the United States or transferring him outside the district during the pendency of his habeas proceeding. Similarly, in *Escalante v. Bondi*, No. 25-CV-3051 (ECT/DIF), 2025 WL 2212104, at *1 (D. Minn. July 31, 2025), the court granted an emergency TRO to restrain transfer pending resolution of a habeas challenging detention under § 1226. And in *Lopez Benifez v. Francis,* No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) the court immediately enjoined removal to preserve habeas jurisdiction where ICE detained the petitioner after years of release on recognizance. petition challenging detention under § 1226. And in *Lopez Benifez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) the court immediately enjoined removal to preserve habeas jurisdiction where ICE detained the petitioner after years of release on recognizance.

In other word, interim relief is warranted under either framework: the traditional Rule 65 factors or the All Writs Act. The Rule 65 analysis favors a TRO here, and the All Writs Act independently authorizes orders necessary to preserve this Court's jurisdiction against transfer or

removal. These cases underscore that temporary injunctive relief is essential in immigration habeas actions to prevent irreparable harm and to ensure judicial review is not mooted by transfer or deportation. As *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. Apr. 24, 2025), observed, when liberty and due process are at stake, irreparable injury, equities, and the public interest converge in favor of preserving the petitioner's rights until the Court can reach the merits.

ARGUMENT

a. Likelihood of Success on the Merits

A movant need not prove certain victory on the underlying claim; it is enough to show a "fair chance of success" or that the petition raises "serious questions going to the merits". *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247-48 (W.D. Wash. Apr, 24, 2025). Petitioner goes well beyond that standard here. The governing statutory framework makes clear that Petitioner's detention falls under 8 U.S.C. § 1226, not § 1225. Section 1225 applies to noncitizens who present themselves at the border seeking initial admission. By contrast, § 1226 governs the arrest and detention of individuals "pending a decision on whether the alien is to be removed from the United States." *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). As the Supreme Court explained, § 1226 establishes a discretionary detention framework, under which noncitizens are entitled to a bond hearing before an Immigration Judge to determine whether they present a danger or flight risk. *Id.* at 838-39. Section 1225's mandatory detention provisions do not apply to a noncitizen like Petitioner who has already been granted asylum by an Immigration Judge and is no longer an "applicant for admission." Although Petitioner was initially placed in removal proceedings under § 1225(b), that posture fundamentally changed once the Immigration Judge granted asylum. The Government's pending appeal to the BIA does not revive § 1225(b) or convert Petitioner back into

an arriving applicant for admission. Collapsing these distinct statutory schemes would render § 1226 largely superfluous and is a reading courts have repeatedly rejected. See, e.g., *Rodriguez*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL 1869299, at *5–8 (D. Mass. July 7, 2025).

Because Petitioner's removal proceedings remain pending on the Government's appeal, any detention authority arises, at most, under § 1226(a). He is therefore entitled to an individualized bond hearing at which the Government bears the burden of justifying continued detention by clear and convincing evidence. *See Gomes*, 2025 WL 1869299, at *5–8. The Government's refusal to provide such a hearing is contrary to the governing statute and violates the Fifth Amendment's guarantee of due process. Recent decisions across the country confirm this interpretation. In *Gomes v. Hyde*, the court held that ICE could not reclassify a long-term resident as subject to § 1225 when he had been apprehended on a warrant inside the United States, ordering a bond hearing under § 1226. Similarly, in *Martinez v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025), the court rejected ICE's attempt to detain a petitioner under § 1225 after she had already been placed in § 1229a proceedings, finding that only § 1226 applied. *Lopez Benitez v. Francis*, --- F, Supp. 3d ----, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025), likewise enjoined ICE's re-detention of a long-settled noncitizen without any individualized custody determination, recognizing that the statutory scheme entitled him to a bond hearing under § 1226. And in *Rodriguez v. Bostock*, the Western District of Washington emphasized that challenges to detention under § 1226 raise serious questions on the merits and granted preliminary injunctive relief to ensure access to bond proceedings.

Another major decision confirms that individuals placed in full removal proceedings cannot be subjected to mandatory detention without a bond hearing. In *Guerrero Orellana v. Moniz*,

No. 25-cv-12664-PBS, 2025 WL 3687757, at *10-11 (D. Mass. Dec. 19, 2025). On October 3, 2025, the Court issued a preliminary injunction for the individual plaintiff. The Court ordered that "the government release" the plaintiff "unless he is provided a bond hearing that complies with the standards outlined in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), within seven business days of the date of this order." On October 30, 2025, the Court granted class certification.

On December 19, 2025, the Court ruled that the Trump administration is unlawfully denying bond hearings to potentially thousands of people in New England who were arrested and detained by ICE and deprived of the opportunity to challenge their ongoing detention. The court granted a motion for partial summary judgment and declared that it was unlawful for the government to deny bond hearings to class members. Like the plaintiff in *Guerrero Orellana*, Petitioner here has been placed in regular removal proceedings and remains detained without any individualized bond determination. Accordingly, his continued mandatory detention is unlawful, and he is entitled to an immediate bond hearing or release under §1226(a).

Together, these decision underscore that the government's reliance on § 1225 in this case is untenable – including an individualized bond hearing – Respondents have violated both INA and Petitioner's constitutional rights. Petitioner therefore demonstrates not just "serious questions," but a strong likelihood of success on the merits.

Petitioner's detention violates his right to substantive due process because he is neither a flight risk nor a danger to his community. Immigration detention is civil and must bear a reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect" *Zadvydas*, 533 U.S. at 690 (cleaned up*); see also Schall v. Martin*, 467 U.S. 253, 264 (1984) (finding detention must be a proportional4not excessive response to a legitimate state objective).

Petitioner is not a flight risk. The government already determined so when it decided to release him on parole. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Since his release, petitioner has followed all of the procedures and requirements of the immigration system, including comply with respondent's request. The government knows this. When he arrived at the border, the government's criminal history check of petitioner returned negative, and he has never been arrested anywhere in the world. The government is not detaining petitioner to serve its legitimate interests in protecting against danger or flight risk. Because petitioner's detention basis bears no "reasonable relation" to the government's interests in preventing flight and danger. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

Petitioner's detention without the opportunity to seek release from neutral decisionmaker violates his right to procedural due process. Petitioner's summary arrest and detention without the government making an affirmative showing of changed circumstances also violates petitioner's procedural due process rights. Even "[w]hen government hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746.

The Court should order his release. In the alternative, the Court should order a bond hearing to ensure detention bears a reasonable relation to the government's interests. In *Padilla v. U.S. Immigr. & Customs Enf't*,, a district court found that a class of asylum-seekers detained under the same detention authority as Petitioner had sufficiently alleged that their detention without bond hearings violated their substantive due process rights. 704 F. Supp. 3d 1163, 1172-73 (W.D. Wash. 2023). The court found that the government could not point to public safety concerns or flight risks

that might justify mandatory detention of the plaintiffs. *Id.* at 1173. Like the plaintiffs in *Padilla*, Petitioner's detention cannot be justified by a legitimate government interest.

b. Petitioner suffers Irreparable Harm Every Day That He Remains in Detention

"The irreparable harm requirement is the single most important prerequisite for the issuance of a preliminary injunction." *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59, 80 (2d Cir. 2024) (cleaned up). Petitioner easily satisfied the irreparable harm requirement. The threatened injuries here are not speculative; they are certain and imminent absent this Court's intervention. First, transfer or removal would defeat this Court's jurisdiction over the habeas petition. As the court explained in *Arostegui-Maldonado y, Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *3 (D. Colo. Aug. 8, 2025), the risk of transfer or removal before adjudication of a habeas petition constitutes irreparable harm because it "would prevent the Court from exercising its jurisdiction and providing effective relief." Similarly, in *Escalante v. Bondi*, No. 25-CV-3051 (ECT/DIF), 2025 WL 2212104, at *5 (D. Minn. July 31, 2025), the court recognized that transfer outside the district could frustrate judicial review and therefore enjoined ICE from moving the petitioner during the pendency of his § 2241 case. And in *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *2 (S.D.N.Y. Aug. 8, 2025), Judge Ho immediately prohibited removal precisely to preserve habeas jurisdiction. These cases establish that the loss of judicial review itself is irreparable harm.

Second, Petitioner faces the ongoing deprivation of liberty without due process, which courts uniformly recognize as a paradigmatic irreparable injury. In *Rodriguez v. Bostock*, 2025 WL 1869299, at *3 (W.D. Wash. Apr. 24, 2025), the court held that continued immigration detention without a proper statutory basis or bond hearing inflicts irreparable harm every day it

persists. *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *3 (D. Colo. Aug. 8, 2025), likewise emphasized that unlawful detention and the threat of removal constitute irreparable injuries justifying preliminary injunctive relief. Finally, transfer or removal would cause severe personal and familial disruption.

Here, the petitioner has never been incarcerated – is having an especially difficult experience. He fled Bangladesh and arrived in the United States alone, seeking refuge from political persecution. Since his arrival, he has faithfully complied with every requirement of the U.S. immigration system, including timely filing his asylum application. After full proceedings, an Immigration Judge granted him asylum, finding that he established a well-founded fear of persecution on account of a protected ground. Yet, despite having obtained this protection for doing exactly what U.S. law asks of those seeking safety, he remains detained in an adult men's facility that courts have repeatedly recognized as tantamount to a penal institution.

In short, absent emergency relief, Petitioner faces the precise irreparable harms that TROs are designed to prevent; loss of judicial review, continued unlawful detention, and separation from family and community.

c. Balance of Equities and Public Interest

When the Government is the opposing party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Both weigh decisively in Petitioner's favor here. Courts have consistently held that the Government suffers no legally cognizable harm from maintaining the status quo while habeas proceedings are pending. As the District of Minnesota recently explained in *Escalante v. Bondi*, 2025 WL 2212104, at *5 (D. Minn. July 31, 2025), "(t]he Government has no legitimate interest in moving Petitioner outside the District while this Court determines the legality of his detention," whereas the harm to the individual from such a transfer

is substantial. Similarly, in *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025), the court held that the Government "has no legitimate interest in detaining a noncitizen under an unlawful theory of authority," while the petitioner faced profound liberty deprivations. And in *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *3 (D. Colo. Aug. 8, 2025), the court found that enjoining transfers pending habeas review both "preserves judicial jurisdiction" and avoids irreparable harm to the petitioner without imposing any meaningful burden on Respondents.

The public interest is likewise aligned with Petitioner. Courts repeatedly emphasize that "the public has a strong interest in ensuring that the Government acts within its statutory and constitutional limits" (*Rodriguez*, 779 F. Supp. 3d at 1248), and in preserving judicial review of immigration detention (*Escalante*, 2025 WL 2212104, at *5). Preventing unnecessary transfers or removals serves not only the interests of the individual but also the broader community, which benefits when immigration enforcement is conducted within the bounds of law. In short, where the only effect of an injunction is to preserve the Court's jurisdiction and ensure lawful process, the equities and public interest factors converge to support relief.

Petitioner cannot be removed to his home country because he has been granted asylum, and removal is therefore legally prohibited unless that protection is overturned. His continued detention by ICE is thus indefinite and unconstitutionally prolonged. Civil immigration detention must bear a reasonable relation to its purpose—effectuating removal—and may not continue where removal is not reasonably foreseeable. *See Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Here, because Petitioner's removal is barred and his proceedings remain pending solely due to the Government's appeal, detention serves no legitimate immigration purpose. ICE's authority to detain is not boundless; it is constrained by the Due Process Clause, which forbids arbitrary or excessive civil detention absent adequate procedural and substantive justification.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, and pursuant to both Rule 65 and the All Writs Act, Petitioner respectfully requests that this Court issue an immediate Temporary Restraining Order, and thereafter a Preliminary Injunction, as follows:

1. Enjoining Respondents from transferring Petitioner to any facility outside the District of Arizona during the pendency of this habeas action;
2. Enjoining Respondents from removing Petitioner from the United States during the pendency of this habeas action;
3. Grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release from ICE custody; or, in the alternative, Order Respondents to provide Petitioner with a constitutionally adequate, individualized bond hearing before an Immigration Judge within seven (7) days, at which the Government bears the burden of justifying continued detention by clear and convincing evidence;
4. Granting such other and further relief as the Court deems just and proper.

DATED: March 16, 2026.

Azam Shaheem
Print Name

Azam Shaheem
Signature