

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF PENNSYLVANIA

Alex Gyimah Agyemang,
Petitioner,

v. Civil Action No. 3:25-CV-1417 (Mehalchick, J.)

U.S. Department of Homeland Security, et al.,
Respondents.

**FILED
SCRANTON**

OCT 09 2025

PER DT
DEPUTY CLERK

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Petitioner **Alex Gyimah Agyemang**, proceeding pro se, respectfully submits this memorandum of law in support of his Emergency Motion for a Temporary Restraining Order (TRO) and Preliminary Injunction (PI).

I. LEGAL STANDARD

A TRO or PI is warranted when the moving party demonstrates:

1. A likelihood of success on the merits;
2. A likelihood of irreparable harm absent relief;
3. That the balance of equities tips in his favor; and
4. That the injunction is in the public interest.

Winter v. Natural Resources Defense Council, 555 U.S. 7, 20 (2008). Courts in the Third Circuit apply these factors flexibly to safeguard fundamental rights, particularly liberty interests. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017).

II. ARGUMENT

A. Likelihood of Success on the Merits

1. **Conviction Not Final Under Orabi**

Petitioner's conviction remains on **direct appeal** before the Third Circuit. Under *Orabi v. Att'y Gen.*, 738 F.3d 535 (3d Cir. 2014), a conviction on direct appeal is not final for immigration purposes. Because § 236(c) applies only to individuals "convicted" of certain offenses, mandatory detention does not apply here.

2. **2019 Bond Order Remains Valid**

An Immigration Judge granted Petitioner **\$12,000 bond** in 2019, which Petitioner posted. He complied fully with bond conditions for nearly six years. Under *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), an IJ's bond order remains binding until revoked through proper procedures. ICE never filed to revoke the bond under **8 C.F.R. § 1236.1(d)**, making re-detention without due process unlawful.

3. **Detention Is Arbitrary as Applied**

The Third Circuit permits as-applied constitutional challenges where detention becomes "unreasonable or arbitrary." *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020). Detention exceeding the purpose of ensuring removal violates due process. Petitioner has already served his federal sentence (8 months) and has now been detained by ICE for 7 months — nearly equal to his criminal term — despite being granted **withholding of removal and CAT protection**, which make removal not reasonably foreseeable.

Thus, Petitioner is likely to succeed on his habeas claim.

B. Irreparable Harm

Irreparable harm exists where detention inflicts continuing injury to health, family, or constitutional rights.

- **Medical Harm:** Petitioner suffers from untreated bilateral knee injuries (with denied MRI requests) and worsening anxiety, depression, and PTSD. Courts recognize denial of essential medical care in detention constitutes irreparable harm. *See Amer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014).*
- **Family Harm:** Petitioner's eldest son **Nasai (13)** lost his mother (2012) and grandmother (2024), leaving him without two caretakers. Petitioner is the only parent able to provide stability, yet detention prevents him from doing so. His son **King (11)** suffers from a serious blood clotting disorder, and his wife faces gallbladder surgery. These conditions demonstrate severe, immediate hardship to U.S. citizen dependents.

- **Constitutional Harm:** Unlawful detention under § 236(c) where it does not apply constitutes irreparable harm to liberty interests protected by the Fifth Amendment.

C. Balance of Equities

The balance of hardships weighs heavily in Petitioner's favor:

- Petitioner has demonstrated **full compliance** with immigration bond conditions for nearly six years and with pretrial supervision for almost as long. He has **no history of flight or violence**.
- Importantly, Petitioner **assisted and cooperated with five separate federal agencies over a six-year period** — both officially and unofficially — in criminal investigations. This cooperation led to a **5K1.1 letter** from the U.S. Attorney's Office and even a **Deferred Action request** by DHS. The government itself recognized Petitioner's reliability, usefulness, and trustworthiness. It is inequitable for the same government now to treat him as too dangerous for bond when it previously relied on his cooperation to further federal law enforcement objectives.
- Respondents' interests in ensuring removal are diminished because Petitioner has already been granted **withholding of removal and CAT relief**, making removal not reasonably foreseeable.
- Continued detention inflicts disproportionate suffering on Petitioner and his U.S. citizen family compared to the minimal risk posed by supervised release.

D. Public Interest

The public interest favors constitutional compliance and due process. Courts have held that "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016).

Allowing Petitioner's continued detention under § 236(c), despite a pending appeal and a valid prior bond order, undermines public trust in lawful immigration enforcement. Release under § 236(a) or an Order of Supervision would protect both public safety and constitutional values.

III. CONCLUSION

For the reasons stated, Petitioner respectfully requests that this Court:

1. Grant an **Emergency Temporary Restraining Order** halting Respondents' detention of Petitioner under § 236(c);
2. Issue a **Preliminary Injunction** reclassifying Petitioner under § 236(a) and directing his release under bond or supervision;
3. Enjoin Respondents from transferring Petitioner out of this Court's jurisdiction while this habeas petition is pending; and
4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: October 7, 2025

/s/ Alex Gyimah Agyemang
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