IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

AYMAN SOLIMAN, Petitioner, v. TODD M. LYONS, Acting Director Field Office Director, Enforcement and Removal Operations Detroit, *et al.*, Respondents.	Case No. 1:25-cv-00556 District Judge Jeffrey P. Hopkins Magistrate Judge Michael R. Merz

RESPONDENTS' RETURN OF WRIT AND RESPONSE TO PETITIONER'S REQUEST FOR TEMPORARY RESTRAINING ORDER

Pursuant to S.D. Ohio Civ. R. 7.2 and this Court's Order entered September 2, 2025, Respondents hereby file a response in opposition to the Amended Emergency Petition for Writ of Habeas Corpus and Request for Temporary Restraining Order (Amended Habeas and TRO Doc. 7, at PageID 337-53). In immigration cases, federal habeas corpus relief is available to review an alien's challenge to an administrative decision that the alien is ineligible to apply for discretionary relief from removal, *I.N.S. v. St. Cyr.*, 533 U.S. 289, 305 (2001), and is also available in the case of statutory and constitutional challenges to the post removal period detention. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (holding that a statute permitting indefinite civil detention of an alien would raise "a serious constitutional problem" due to conflict with the Due Process Clause of the Fifth Amendment). Neither of those circumstances apply in this case. Here, Petitioner Ayman Soliman's habeas claims fail because what he is seeking is for this Court to intervene in his removal proceedings in immigration court and

reinstate his asylum status. See Amended Habeas and TRO at PageID 349-50. Thus, Petitioner has not, and cannot, assert any jurisdictional grounds for habeas relief.

STATEMENT OF FACTS

Petitioner Ayman Soliman, a citizen of Egypt, entered the United States around March 6, 2014, as a nonimmigrant B-1/B-2 visitor. Form I-261 Additional Charges of Inadmissibility/Deportability, Doc. 7-1, Ex. G at PageID 378-79. Petitioner's status as a visitor to the United States permitted him to remain in the United States until September 1, 2014. *Id.* at 378. On September 2, 2014, Petitioner's status changed from B-1/B-2 visitor to an R-1 nonimmigrant (temporary religious worker), with authorization to remain in the United States until March 1, 2017. *Id.* During his status as a religious worker, Petitioner filed an I-589 Application for Asylum with the United States Citizenship and Immigration Services (USCIS) Asylum Office. *Id.* USCIS Chicago Asylum Office granted Petitioner's application for asylum on June 7, 2018. *Id.*

By letter dated December 4, 2024, USCIS provided Petitioner with a Notice of Intent to Terminate His Asylum Status ("NOIT") pursuant to 8 C.F.R. § 208.24(a)(l). NOIT, Doc. 7-1, Ex. H at PageID 386-88. Among the reasons given for termination of Petitioner's asylum status pursuant to 8 U.S.C. § 1158: (1) the discovery of fraud in his application for asylum, and (2) information indicating that Petitioner had provided material support to a Tier III terrorist organization and/or for possible membership in a terrorist organization, as defined in 8 U.S.C. § 1182. NOIT at PageID 386. USCIS set an interview date for January 21, 2025, which was rescheduled to February 6, 2025. *Id.* at PageID 387. Additionally, USCIS notified Petitioner that if USCIS determined that he was no longer eligible for asylum, it would terminate his asylum status and employment authorization and place him in removal proceedings where

Petitioner would be able to renew his request for asylum before an Immigration Judge. *Id.* at PageID 388.

Petitioner provided oral testimony and documentation in his defense during his termination hearing. Soliman February 2025 Interview, Doc. 7-1, Ex. H at PageID 389-95. By letter dated June 5, 2025, USCIS informed Petitioner that a preponderance of the evidence indicated that he had provided material support to a Tier III terrorist organization, and because Petitioner had not demonstrated by clear and convincing evidence that he had not known that he was supporting a terrorist organization, USCIS terminated Petitioner's asylum status and authorization to remain in the United States, effective June 3, 2025. Asylum Termination, Doc. 7-1, Ex. B at PageID 360-62; Doc. 7-1, Ex. H at PageID 383-85. At the same time USCIS terminated Petitioner's asylum, it issued a Notice to Appear ("NTA") placing Petitioner in removal proceeding. NTA, Doc. 7-1, Ex. F at PageID 374-76. The initial NTA charged Petitioner with being removable under 8 U.S.C. § 1227 for being inadmissible at the time of adjustment by means of 8 U.S.C. § 1182 for having provided material support to a terrorist organization. NTA at PageID 374.

Petitioner was taken into custody by U.S. Immigration and Customs Enforcement (ICE) on July 9, 2025. Amended Habeas and TRO at PageID 341, ¶14. On July 10, 2025, Petitioner filed written pleadings in immigration court contesting the charge of removability in the initial NTA. *Id.* at ¶15. On July 22, 2025, ICE filed Form I-261 amending the factual allegations and replacing the charges of removability set forth in the prior NTA. Form I-261 at PageID 374. Because Petitioner was not a lawful permanent resident and USCIS had terminated his asylum status, Petitioner no longer had authorization to remain in the United States. *Id.* Accordingly, ICE charged Petitioner with remaining in the United States longer than permitted. *Id.* at PageID

378. ICE also charged the Petitioner as being present in the United States in violation of law. *Id.* ICE filed the amended grounds of removability prior to the master calendar and bond hearing before the immigration judge. Amended Habeas and TRO at PageID 341, ¶¶13, 16. On July 28, 2025, after full consideration of the evidence presented by ICE and Petitioner, the immigration judge denied bond on two separate grounds. July 28, 2025, Order of IJ, Doc. 7-1, Ex. A at PageID 357-58. First, the immigration judge found that she lacked authority to redetermine Petitioner's custody status. *Id.* at PageID 357. Second, the immigration judge found that alternatively Petitioner had not met his burden to establish that he did not pose a threat to the community and a risk of flight from proceedings. *Id.* On August 11, 2025, the immigration judge amended her order denying Petitioner bond, and adding an August 27, 2025, appeal deadline. Amended Order of IJ, Doc. 13, Ex. A Part 1 at PageID 742-43. Petitioner did not appeal the denial of bond.

Petitioner filed the instant habeas petition and request for temporary restraining order on August 8, 2025, alleging due process violations. On September 3, 2025, Petitioner filed an emergency ex parte request for temporary restraining order seeking release from detention prior to his merits hearing scheduled for September 25, 2025. Ex. B attached to Motion (not filed on ECF). This Court denied that motion. September 5, 2025, Minute Entry and Notation Order denying Petitioner's Emergency Motions for Temporary Restraining Order.

ARGUMENT

As an initial consideration, 8 U.S.C. § 1226(e) provides that an alien cannot challenge "a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release." *Jennings v. Rodriguez*, 538 U.S. 281, 295 (2018) (*citing Demore v. Kim*, 538 U.S. 510, 576 (2003)). An alien may challenge the statutory framework

permitting his detention. *Jennings*, at 295-96. Accordingly, to the extent Petitioner is challenging ICE's decision to arrest and detain him, the Petition must be denied for want of jurisdiction.

"District courts in the Sixth Circuit have "retained jurisdiction over due process claims where a habeas petition challenges only the constitutionality of the arrest and detention." *Diaz-Calderon v. Barr*, 535 F. Supp. 3d 669, 675-76 (E.D. Mich. 2020) (citing *Kellici v. Gonzales*, 472 F.3d 416, 419-20 (6th Cir. 2006)); *see also Malam v. Adducci*, 452 F. Supp. 3d 643, 649 (E.D. Mich. 2020) (*citing Jennings*, 538 U.S. at 295) (jurisdiction in cases challenging the constitutionality of their pre-removal detention) and (citing *Demore v. Kim*, 538 U.S. at 516-17 ("The jurisdiction conferred on federal courts by Section 2241 includes the authority to review noncitizen's claims challenging the constitutionality of their detention during the pendency of removal proceedings.")."

At the outset, the Supreme Court explained in *Landon v. Plasencia*, 459 U.S. 21, 34-35 (1982), that policy decisions in the immigration context are best left to executive and legislative branches. Specifically, the Court stated that "control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Id.* at 34. "The role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." *Id.* at 34-35.

"Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008) *citing Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) (plurality opinion). The writ of habeas corpus and its protections are "strongest" when reviewing "the legality of Executive detention." *INS v. St. Cyr.*, 533 U.S. 289, 301 (2001). Simply put, habeas is a

challenge to unlawful detention or restraints on an individual's liberty. In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), the Supreme Court reaffirmed that the habeas writ provides a means of contesting the lawfulness of restraint and securing release. *Id.* at 117. Habeas corpus cannot be used to obtain the right to enter or remain in the United States. *Id.* Nor is habeas a mechanism that can be used to obtain administrative review that would result in remaining in the United States. *Id.* The essence of habeas corpus is "an attack by a person in custody upon the *legality* of that custody," *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), (emphasis added), and to secure release from illegal custody. *Id.* Therefore, the Supreme Court in *Thuraissigiam* stated that "claims so far outside the "core" of habeas may not be pursued through habeas." *Thuraissigiam*, 591 U.S. at 119 (citing *Skinner v. Switzer*, 562 U.S. 521, 535, n.13 (2011)).

In this case, Petitioner does not want "simple release" but, ultimately, the opportunity to remain lawfully in the United States. *See Munaf*, 553 U.S. at 693-94 (federal district courts may not exercise their habeas jurisdiction to enjoin the United States from transferring individuals alleged to have committed crimes and detained within the territory of a foreign sovereign to that sovereign for criminal prosecution). Although Petitioner styles this action in habeas, it is a disguised complaint seeking review of the termination of his asylum status and ongoing immigration proceedings. *See* Amended Habeas and TRO at PageID 343-44 (alleging the termination of his asylum is unlawful and thus his detention unlawful). In addition to seeking immediate release from custody, Petitioner seeks recission of the termination of his asylum and reinstatement of his asylum status, enjoinment of ICE from detaining or removing him pending resolution of this action, restriction of Department of Homeland Security (DHS) and agents from discussing his immigration case without the presence of his counsel, communications with

his counsel "at reasonable times and in a secured and confidential manner." Amended Habeas and TRO, Request for Relief at PageID 349-50. Petitioner is legally detained and therefore, the relief Petitioner seeks falls outside the scope of a habeas writ. Accordingly, this Court lacks habeas jurisdiction. It would be improper for this Court to use the mechanism of habeas to impose removal procedures that Petitioner finds preferable.

To the extent that Petitioner is using this habeas to challenge the decision to commence removal proceedings, Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)." While Petitioner does not explicitly state that he is challenging the decision to begin removal proceedings, to the extent that he implicitly making such an attack, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Therefore, Petitioner's claims should be dismiss as running afoul of the jurisdictional bars contained in 8 U.S.C. § 1252(g).

A. Petitioner's Pre-Order Detention Under 8 U.S.C. § 1226 is not Subject to Habeas Relief.

Congress set a statutory scheme for detention of anyone unlawfully in the United States. Under 8 U.S.C. § 1226(a), a person awaiting a decision on whether they will be removed from the United States may be arrested and detained pending the outcome of the removal proceedings. The discretionary judgment regarding whether to detain, revoke or deny bond or parole is not subject to judicial review. 8 U.S.C. § 1226(e).

i. 8 U.S.C. § 1226(e) Bars Judicial Review of the Attorney General's Decision to Arrest and Detain an Alien Pursuant to 8 U.S.C. § 1226.

Congress has made clear that ICE's "discretionary judgment regarding the application of [8 U.S.C. § 1226] shall not be subject to review." 8 U.S.C. § 1226(e). Section 1226(e) further directs that "[n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the revocation or denial of bond or parole." *Id.* As such, this provision blocks judicial review of ICE's decisions to arrest and detain aliens subject to 8 U.S.C. § 1226.

As the Supreme Court explained in *Demore v. Kim*, this provision applies to strip jurisdiction of judicial review to ICE's judgments and decisions to arrest and detain aliens subject to 8 U.S.C. § 1226. *Id.* at 516–17; *see also Jennings*, 583 U.S. 281, 295–96 (Section "1226(e) precludes an alien from challenging a discretionary judgment by the [Secretary] or a decision that the [Secretary] has made regarding his detention or release.") (cleaned up). In *Jennings*, the Supreme Court explained that Section 1226(e) would not bar jurisdiction of a challenge to "the extent of the Government's detention authority under the statutory framework as a whole." *Id.* Jurisdiction would also not be stripped if the challenge was to "the constitutionality of the entire statutory scheme under the Fifth Amendment." *Id.* at 295–96. But, if the challenge is simply to ICE's decision to arrest and detain an alien, as Petitioner challenges here, then Section 1226(e) squarely applies to strip a court of jurisdiction to review such action. *See Nielsen v. Preap*, 586 U.S. 393, 401 (2019) (explaining that Section 1226(e) "applies only to 'discretionary' decisions about the 'application of § 1226 to particular cases."); *Hamada v. Gillen*, 616 F. Supp. 2d 177, 181 (D. Mass. 2009) (concluding that district court lacks jurisdiction under Section 1226(e) to review decision to detain and deny bond to alien and also

finding claim that detention violates due process rights without merit "because detention during removal proceedings is a constitutionally permissible part of that process." *Demore*, at 531.).

Petitioner is lawfully being detained pursuant to 8 U.S.C. § 8 U.S.C. § 1226(c)(1)(D) because he is inadmissible pursuant to 8 U.S.C. § 1182(a)(3)(B). Asylum Termination at PageID 360-62. The decision to arrest and detain Petitioner pursuant to 8 U.S.C. § 1226 is not reviewable by this Court pursuant to 8 U.S.C. § 1226(e). As such, the Petition should be denied and dismissed for lack of subject matter jurisdiction.

When USCIS terminated Petitioner's asylum, he reverted to his R-1 nonimmigrant status that expired on March 1, 2017. Form I-261 at PageID 378, ¶4. Accordingly, Petitioner was present in the United States for a time longer than permitted in violation of the law. 8 U.S.C. § 1227. ICE lawfully took Petitioner into custody pursuant to 8 U.S.C. § 1226(a). *See Demore v. Kim*, at 531 (detention of noncitizens during removal proceedings constitutional). As the Third Circuit has explained in its decision upholding the constitutionality of § 1226(a) as applied to noncitizen detainees with a substantial defense to removal:

> Were there any doubt, the Supreme Court has observed in the years since *Demore* both that § 1226(c) requires the Government to "detain an alien until 'a decision on *whether* the alien is to be removed' is made," *Jennings v. Rodriguez*, [583 U.S. 281, 305] [] (2018) (quoting 8 U.S.C. § 1226(a)), and that it mandates that such noncitizens "be detained without a bond hearing *until the question of their removal is resolved*," *Preap*, [586 U.S. at 396] (emphasis added).

Gayle v. Warden Monmouth Cnty. Corr. Inst., 12 F.4th 321, 330 (3d Cir. 2021).

ii. If DHS Has Reason to Believe Petitioner is a Member of Terrorism Organization, the IJ Lacks Jurisdiction to Redetermine his Custody.

Although providing material support to a Tier III terrorist organization is no longer the grounds upon which Petitioner is charged with removability, material support is still relevant to the immigration judge's authority over bond. Significantly, 8 C.F.R. § 1003.19(h)(2)(i)(C)

provides that immigration judges do not have authority to redetermine custody for aliens who have provided material support to a terrorist organization. In *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1033 (E.D. Wis.) (aff'd sub nom. *Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007)), based on its interpretation on 8 C.F.R. § 1003.19(h)(2)(i)(C), the Board of Immigration Appeals ("BIA") found if DHS had "reason to believe" that the alien was a member of a terrorist organization that was enough to divested an IJ of jurisdiction to redetermine his custody. *Hussain v. Gonzales*, 492 F. Supp. 2d at 1033. The IJ's lack of jurisdiction was not dependent on the alien being charged under 8 U.S.C. § 1227(a)(4) with removability on the ground of terrorist-related conduct. *Id.* The BIA also noted the alien's right under 8 C.F.R. § 1003.19(h)(2)(i)(C) to offer evidence and legal authority to challenge DHS's classification of the alien. § 1003.19(h)(2)(i)(C) (nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within any of those paragraphs); *Hussain v. Gonzales*, 492 F. Supp. 2d at 1033.

Petitioner received bond hearings at the outset of detention. At the bond hearing, Petitioner had the opportunity to dispute whether he provided material support to a Tier III terrorist organization. 8 C.F.R. § § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service"). After full consideration of the evidence the immigration judge found that she lacked the authority to release Petitioner on bond, and that Petitioner posed a threat to the community and a flight risk. July 28, 2025, Order of Immigration Judge at PageID 341; Amended Order of Immigration Judge at PageID 742-43. Petitioner's remedy was to appeal the immigration judge's decision to the BIA. 8 C.F.R. § 236.1 (an appeal from the determination by an Immigration Judge may be taken to the BIA pursuant to

§ 1003.38). To date, Petitioner has not perfected an appeal of the immigration judge's bond determination. Amended Order of Immigration Judge at PageID 742-43. Therefore, Petitioner cannot demonstrate any violation of his due process rights.

Citing *Ly v. Hansen*, 351 F.3d 263, 271 (6th Cir. 2003), Petitioner attempts to argue that prolonged detention without a bond hearing violates due process. Amended Habeas and TRO at PageID 348, ¶32. In *Ly*, the petitioner was in detention for 500 days, before his release at the order of the district court. In this case, Petitioner has been in pre-order detention for a little over 60 days, and the immigration judge set his merits hearings for September 25, 2025. Emergency Ex Parte Request for Temporary Restraining Order Preventing Continued Detention dated September 4, 2025, Exhibit B. The Sixth Circuit in *Ly* held that the agency "may detain *prima facie* removable aliens for a time reasonably required to complete removal proceedings in a timely manner. If the process takes an unreasonably long time, the detainee may seek relief in habeas proceedings." *Ly*, 351 F.3d at 268 (emphasis added). 60 days in custody is not an unreasonably long time, and the fact that the immigration judge initially set Petitioner's merits hearing for December 15, 2025 then move it up to September 25, 2025, is evidence that the immigration court is working expediently to complete Petitioner's removal proceedings in a timely manner. *See* September 4, 2025, Emergency Ex Parte TRO Ex. B.

Additionally, Petitioner's reliance on *Zadvydas*, is misplaced as that case is about the implication of the post-removal period detention statute, 8 U.S.C. § 1231(a)(6). There, *Zadvydas* could not be removed from the United States and was detained past the 90-day removal period. *Id.* at 701. The Supreme Court interpreted § 1231(a)(6) to contain an implicit "reasonable time" limitation of six months, which would be subject to federal court review. *Zadvydas* at 702. The Supreme Court held that once removal has proved to be impossible or highly unlikely, further

detention is unreasonable and therefore unauthorized by the statute. *Id.* at 702. This Petitioner's merits hearing is scheduled for September 25, 2025, and as such, he is in pre-order detention. *Zadvydas* is inapplicable. Accordingly, Petitioner's claim for habeas relief is without merit.

iii. Habeas is not the Proper Mechanism for Review of Petitioner's Termination of his Asylum and Reinstatement of his Asylum Status.

The Supreme Court in *Thuraissigiam*, specifically stated that a petitioner cannot use habeas jurisdiction to remain in the United States or seek administrative review that would result in the petitioner remaining in the United States. *Thuraissigiam*, 591 U.S. at 117. Yet, that is precisely what Petitioner seeks when he asks this Court to use habeas jurisdiction to reinstate his asylum status.

a. General Statutory Framework Governing the Removal of Aliens

The Immigration and Nationality Act (INA) establishes several avenues by which various categories of non-citizens can be denied entry or removed from the United States. Generally, when DHS seeks to remove a person found to be unlawfully within the interior of the United States, it institutes removal proceedings under 8 U.S.C. § 1229a - Removal proceedings. *See* Form I-261 at PageID 378. Pursuant to 8 U.S.C. § 1226, DHS generally may detain non-citizens pending proceedings, but detention is mandatory for noncitizens removable on certain criminal/terrorist related grounds. Removal proceedings are conducted by an immigration judge before whom noncitizens are afforded due process protections. 8 U.S.C. § 1229a(b)(1) (the immigration judge can receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The immigration judge may issue subpoenas for the attendance of witnesses and presentation of evidence). Additionally, individuals in removal proceedings can be represented by counsel of their own choosing, at no expense to the Government, and can examine the evidence against them, present evidence on their own behalf, and cross-examine

witnesses presented by the Government. 8 U.S.C. § 1229a(b)(4). They can also apply for relief or protection from removal such as asylum, or for cancellation of removal and adjustment of status. 8 U.S.C. § 1229a(c)(4); 8 U.S.C. § 1229b.

8 C.F.R. § 208.24(a) and (c) govern the procedure for termination of asylum by USCIS. Once an alien's asylum status is terminated, USCIS is required to initiate removal proceedings. 8 C.F.R. § 208.24(e). Once in removal proceedings, an immigration judge considers an alien's asylum application *de novo*, without giving deference to the previous decision by the asylum officer. 8 C.F.R. § 1240.2(a). Under 8 C.F.R. § 1003.1(d)(3), the BIA reviews an IJ's factual findings for "clear error," and it reviews all other issues de novo, including "questions of law, discretion, and judgment." *See* 8 C.F.R. § 1003.1(d)(3)(i) (2020). The BIA reviews mixed questions of law and fact under a bifurcated standard of review: reviewing underlying factual determinations for clear error and conclusions as to whether those facts meet the relevant legal standard *de novo*. 8 C.F.R. § 1003.1(d)(3) (the BIA review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges de novo and findings of fact including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous). *See, e.g.*, *Kaplun v. Att'y Gen.*, 602 F.3d 260, 271 (3d. Cir 2010); *Upatcha v. Sessions*, 849 F.3d 181, 184-85 (4th Cir. 2017).

Most adverse decisions by an immigration judge may be appealed to the BIA, the highest administrative body responsible for interpreting and applying U.S. immigration laws. 8 C.F.R. § 1003.3 (A party affected by a decision of an immigration judge may appeal to the Board). If the BIA affirms the immigration judge's order of removal, that order becomes administratively final and the person may, as authorized by statute, seek judicial review of a final order of removal in

the judicial circuit in which the removal proceedings were completed. 8 U.S.C. § 1252(a) (judicial review of orders of removal).

In considering a petition for review of a decision, the appellate court reviews the BIA's legal determinations *de novo*, (*Mostafa v. Ashcroft*, 395 F.3d 622, 624 (6th Cir. 2005), and its factual findings under the substantial evidence standard, *Marku v. Ashcroft*, 380 F.3d 982, 986 (6th Cir. 2004). Accordingly, the appellate court will uphold the BIA's findings as long as they are "supported by reasonable, substantial, and probative evidence on the record considered as a whole." *INS v. Elias–Zacarias*, 502 U.S. 478, 481 (1992).

b. Habeas Relief is Not Appropriate Because Termination of Asylum Does Not Consummate Final Agency Action

Petitioner seeks to use habeas jurisdiction as a mechanism for this court to review USCIS's termination of his asylum status by claiming violations of the Fifth and Fourteenth Amendments. Amended Habeas and TRO at PageID 343-44. His claim fails. In *Qureshi v. Holder*, 663 F.3d 778, 779 (2011), the Fifth Circuit found that the termination of asylum does not consummate final agency action. In June 2010, the Qureshis sued USCIS claiming that termination of their asylum status violated the Constitution, multiple statutes, and federal regulations. The district court granted USCIS's motion to dismiss for lack of subject matter jurisdiction, reasoning that the termination was not a final agency action, because the Qureshis could renew their asylum claim in removal proceedings. *Id.* The Fifth Circuit specifically recognized that neither an immigration judge or the BIA has "authority to review USCIS's decision to terminate asylum." *Qureshi*, 633 F.3d at 780 (citing *Bhargava v. Att'y Gen. of the U.S.*, 611 F.3d 168, 170-71 (3d Cir. 2010).

The Fifth Circuit affirmed finding the Qureshis' lawsuit premature because termination of asylum does not "mark the consummation" of a decision-making process, and therefore it is

not a final agency action. *Id.* at 782. The Seventh Circuit reached the same decision in *Dhakal v. Sessions*, 895 F.3d 532, 534 (2018), finding that USCIS denial of Dhakal's asylum application did not mark consummation of agency's decision-making process and thus was not subject to judicial review under the Administrative Procedure Act (APA). *See also Marlen Sayegh v. Jaddou*, Case No. 4:23-cv-04129, 2025 WL 816738, *3-*4 (S.D. Texas Jan 22, 2025) (citing *Dhakal*, concluding denial of asylum not final agency action because noncitizens right to *de novo* review in removal proceedings).

Likewise, in *Jama v. U.S. Citizenship and Immigration Services*, 962 F. Supp. 2d 939 ((N.D. Ohio 2013), the petitioner filed suit challenging termination of his refugee status. Citing *Qureshi v. Holder*, the district court found that where removal proceedings are pending, giving rise to further administrative relief, the termination of an alien's current status is an intermediate, nonfinal agency action, and granted the USCIS's motion to dismiss. *Id.* In affirming the case on appeal, the Sixth Circuit observed that, "Jama's removal proceedings are presently ongoing; the IJ has not yet considered his application for asylum . . . ." *Jama v. Dept. of Homeland Security*, 760 F.3d 490, 496 (6th Cir. 2014). This Petitioner is in the exact same situation as the petitioner in *Jama*. As in *Jama*, if Petitioner is granted asylum, he will remain in the United States, "notwithstanding USCIS's decision to terminate his" asylum status. *Id.* As such, this Court should conclude, as in the *Jama* decision, that USCIS's decision to terminate Petitioner's asylum is merely an intermediate decision. *Id.* Thus, the termination of Petitioner's asylum was not a final agency action. *Id.* at 497.

Petitioner relies on *Arangure v. Whitaker*, 911 F.3d 333, 338 (6th Cir. 2018) to argue that this Court may review his termination of asylum and that his detention is unlawful. There were three issues raised in Arangure:"(1) whether the doctrine of res judicata applies in removal

proceedings (which requires an assessment of whether the Board's conclusion is entitled to *Chevron* deference); (2) if res judicata does apply, whether the elements are met here such that the second removal proceeding is barred; and (3) if res judicata does not bar the second removal proceeding, whether it was right on the merits (i.e., whether Jasso's home-invasion conviction qualifies as a "burglary offense" under the INA)." *Id.* at 337. None of those issues are present in this case because Petitioner is in removal proceedings for the first time, and thus, Petitioner's citation to *Arangure* is misplaced. The bottom line is that because Petitioner's termination of asylum, which can be terminated by USCIS pursuant to 8 C.F.R.§ 208.24, there is no final agency action. As such, Petitioner can renew his application for asylum during his removal proceedings, which if denied he can then appeal to the BIA, and then the appropriate circuit court, accordingly, his claim here cannot stand.

iv. Petitioner Cannot Show a Likelihood of Success Entitling him to a Preliminary Injunction.

Preliminary injunction is an extraordinary remedy which should be granted only if the movant carries the burden of proving that circumstances clearly demand it. *Leary v. Daeschner*, 228 F.3d 729, 736 (6th Cir. 2000). To determine whether the issuance of a temporary restraining order (TRO) is appropriate, the court considers: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent a TRO; (3) whether granting the TRO would cause substantial harm to others; and (4) whether the public interest would be served by granting the TRO. *Id.* at 739. The Court should deny Petitioner's request for a temporary restraining order because he cannot show that he is likely to succeed on the merits of his claims. *Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002) (such relief "should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it."); *see also National Wildlife Fed'n v. Burford*,

878 F.2d 422, 432 (D.C. Cir. 1989) ("To obtain a preliminary injunction, [the plaintiff] not only had to demonstrate specific harm, but also carry the burden of persuasion, showing a likelihood of success on the merits.")

Petitioner will not succeed in this forum in reversing the termination of his asylum status because it is not a final agency action and he can renew his application for asylum in his removal proceedings. Additionally, as this Court lacks jurisdiction to release Petitioner from detention, his request for a temporary restraining order must be denied.

CONCLUSION

For the foregoing reasons, the Court should deny the Habeas Petition and the Request for Temporary Restraining Order and dismiss this action.

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Dated: September 11, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2025, I electronically filed the foregoing **RESPONDENTS' RETURN OF WRIT AND RESPONSE TO PETITIONER'S REQUEST FOR TEMPORARY RESTRAINING ORDER** with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ *Sherry D. Soanes*
SHERRY D. SOANES