

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

Mujtaba QEYAMI,

Petitioner,

v.

Michael BRECKON, Warden, *et al.*,

Respondents.

Civil Action No. 5:25-cv-87-LGW-BWC

HEARING REQUESTED

**MOTION FOR AND MEMORANDUM IN SUPPORT OF
TEMPORARY RESTRAINING ORDER**

NOW COMES Petitioner Mujtaba Qeyami (“Mr. Qeyami”) and respectfully moves this Court for a Temporary Restraining Order enjoining Respondents from (1) transferring him from this district during the pendency of this habeas action, and (2) removing him without statutorily required process during the pendency of this habeas action.

FACTUAL BACKGROUND

Mr. Qeyami is a native and citizen of Afghanistan (now, under Taliban control, the Islamic Emirate of Afghanistan). He entered the United States without inspection on or around February 5, 2025, after fleeing Taliban-controlled Afghanistan in fear for his life. [REDACTED]

[REDACTED]

[REDACTED]

After entering the U.S. without inspection, Mr. Qeyami immediately turned himself in to officers with Customs and Border Protection (“CBP”) who were present. He was subsequently

detained and shuttled through several detention centers in multiple cities and states—San Diego, CA; San Antonio, TX; Karnes County, TX; and now Folkston, GA.

The U.S. government subjected Mr. Qeyami to a set of policies through which it purported to “suspend” his entry into the United States. On January 20, 2025, President Trump issued a proclamation¹ (referred to herein as the “2025 Proclamation”) that purported in part to enact Section 212(f) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(f), [hereinafter, “212(f)"] to suspend entry into the United States and “in effect, prevent[] anyone who crosses the southern border of the United States at any place other than a designated port of entry, as well as anyone who enters anywhere else (including at a designated port of entry) without a visa or without extensive medical information, criminal history records, and other background records, from applying for asylum or withholding of removal.” *Refugee & Imm. Ctr. for Educ. & Legal Servs. v. Noem*, – F. Supp. 3d –, 2025 WL 1825431, at *1 (D.D.C. July 2, 2025) [hereinafter, “*RAICES*”], *appeal docketed*, No. 25-5243 (D.C. Cir. July 3, 2025).

Section 212(f) states, in relevant part,

Whenever the President finds that the entry of any [noncitizens] or of any class of [noncitizens] into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all [noncitizens] or any class of [noncitizens] as immigrants or nonimmigrants, or impose on the entry of [noncitizens] any restrictions he may deem to be appropriate.

On or around March 24, 2025, Mr. Qeyami, then *pro se*, was interviewed by an immigration officer to determine whether it was more likely than not that he would be tortured if removed to Afghanistan. On information and belief, the immigration officer concluded that Mr. Qeyami did

¹ Presidential Proclamation, “Guaranteeing The States Protection Against Invasion,” 90 Fed. Reg. 8333 (Jan. 20, 2025) [hereinafter, “the 2025 Proclamation”]. The 2025 Proclamation has recently been enjoined in large part by the Court of Appeals for the District of Columbia. *RAICES v. Noem*, Case No. 25-5243 (D.C. Cir. Aug. 1, 2025).

not establish that it was more likely than not that he would be tortured upon his return to Taliban-controlled Afghanistan. There is no opportunity for review or reconsideration of any kind, and the decision was final.

Since then, Respondents have not been able to remove Mr. Qeyami either to Afghanistan or any other country. He has been trapped in detention with no process for over six months with no end in sight.

Mr. Qeyami subsequently retained immigration counsel, who has, since June 2025, attempted to communicate with Immigration and Customs Enforcement (“ICE”) officers about Mr. Qeyami’s case on several occasions. *See* Dkt. 1-2. In its responses, ICE has made confusing statements, including that Mr. Qeyami “entered” under 212(f), which is incorrect, as that is a statute that suspends entry. *Id.*; *see also id.* at 2 (referring to the 212(f) CAT Worksheet as conferring authority to suspend entry).

On July 1, 2025, Mr. Qeyami appeared in immigration court for a bond hearing, which was docketed after his immigration counsel filed a Motion for Custody Redetermination. *See* Dkt. 1-3. At that bond hearing, the immigration judge found that the immigration court did not have jurisdiction to reconsider Mr. Qeyami’s custody because he had a “final order” of removal. *Id.* at 2. The immigration judge based this decision on a “limited bond record,” acknowledging the “absence of clear documentation of a final order of removal.” *Id.*

Mr. Qeyami filed a petition for a writ of habeas corpus, arguing that Respondents lack any authority to detain him and that he should be released from detention, that in the alternative he should be granted a bond hearing, and that his indefinite detention violates his due process rights.

LEGAL STANDARD

Federal Rule of Civil Procedure 65 authorizes courts to enter preliminary injunctions and issue temporary restraining orders (“TRO”). Fed. R. Civ. P. 65(a), (b).

A Court deciding whether, in its discretion, to grant emergency relief must consider four factors: (1) whether petitioner has established a likelihood of success on the merits; (2) that the petitioner is likely to suffer irreparable harm in the absence of such relief; (3) that the balance of equities tips in the petitioner’s favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (citing *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir. 1994)). “The first two factors are ‘the most critical.’” *Swain v. Junior*, 958 F.3d 1081, 1088 (11th Cir. 2020). The moving party must show more than a mere “possibility” of irreparable harm. *See Florida v. Dep’t of Health & Human Servs.*, 19 F.4th 1271, 1291 (11th Cir. 2021) (citing *Winter*, 555 U.S. at 22).

ARGUMENT

The Court should grant Mr. Qeyami’s temporary restraining order in order to ensure access to justice, access to counsel, and in the interest of fairness.

I. Mr. Qeyami is Likely to Succeed on the Merits of His Petition

Mr. Qeyami’s Petition for Habeas Corpus contains three claims for relief; he is likely to succeed on all his claims. Moreover, “[w]here, as here, the ‘balance of the equities weighs heavily in favor of granting the [injunction]’ the Petitioner need[s] only show a ‘substantial case on the merits.’” *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1298 (11th Cir. 2005).

1. There is no legal authority to detain Mr. Qeyami.

The INA, 8 U.S.C. § 1101 et seq., contains three relevant provisions that explicitly govern

the detention of noncitizens during removal proceedings and after they have been ordered removed, respectively: 8 U.S.C. §§ 1225, 1226, and 1231. Mr. Qeyami's detention does not cleanly fit into any of those provisions, and section 212(f), 8 U.S.C. § 1182(f), does not authorize detention.

Section 1225 authorizes detention for two categories of “applicants for admission” (as defined at § 1225(a)(1)) who enter or attempt to gain admission to the United States without authorization or valid documents. The authority to detain for both categories is tied not, though, to whether a noncitizen is an “applicant for admission,” but to how the Department of Homeland Security (“DHS”) processes them. This detention authority relies on and is explicitly tied to being afforded a particular process. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (“Any [noncitizen] **subject to the procedures under this clause** shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” (emphasis added)); 8 U.S.C. § 1225(b)(2)(A) (“[I]f the examining immigration officer determines that a [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained **for a proceeding under section 1229a of this title.**” (emphasis added)).

Mr. Qeyami is not detained pursuant to 8 U.S.C. § 1225. The Government has never afforded him the process pursuant to either § 1225(b)(1)(B)(iii)(IV) or § 1225(b)(2)(A). In fact, the Government is “not even purporting to implement § 1225(b)(1)” for noncitizens subjected to 212(f) and the 2025 Proclamation. *RAICES v. Noem*, 2025 WL 1825431, at *26.

Section 1226, or the “default rule,” *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018), authorizes permissive detention of individuals “pending a decision on whether [they are] to be removed from the United States,” 8 U.S.C. § 1226(a). An individual detained under § 1226(a) is eligible for release on bond or conditional parole. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). A

separate subsection of § 1226, which is not relevant here, provides that certain noncitizens who would otherwise be eligible for a bond hearing under § 1226(a) are instead subject to mandatory detention if they have certain issues in their criminal history. 8 U.S.C. § 1226(c).

Finally, § 1231 governs the detention of individuals during and, in some cases, after the initial 90-day “removal period” once they have received a final order of removal. 8 U.S.C. § 1231(a)(1)(A); *compare* § 1231(a)(2) (“During the removal period, the Attorney General *shall* detain the [noncitizen]” (emphasis added)), *with* § 1231(a)(6) (the government “may” detain certain noncitizens “beyond the removal period”). Someone whose entry has been “suspended” is not subject to a final order as defined by statute. *See* 8 C.F.R. § 1241.1 (defining “Final order of removal” for full removal proceedings); 8 C.F.R. § 235.3(b)(7) (defining finality for expedited removal proceedings).

Congress is well aware of how to mandate or permit detention, and has done so in the provisions described herein. *See e.g.*, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 U.S.C. § 1225(b)(2)(A); 8 U.S.C. § 1226(a), (c); 8 U.S.C. § 1231(a)(2), (6). Section 212(f) does not contain any language at all regarding detention. Because Mr. Qeyami’s detention does not fall under any of these statutes, his detention is ultra vires and unauthorized.²

2. If there is legal authority to detain Mr. Qeyami, it is found in 8 U.S.C. § 1226(a), and he is therefore entitled to a bond hearing.

Although there are few analogs to Mr. Qeyami’s situation, where the government is detaining him absent any process or express statutory authority to do so, one reference point is the Visa Waiver Program (“VWP”), where individuals who overstay or otherwise violate the terms of

² Moreover, the 2025 Proclamation was and is not a lawful implementation of the President’s authority pursuant to section 212(f). *See RAICES v. Noem*, Case No. 25-5243, slip op. (D.C. Cir. Aug. 1, 2025). Therefore, Mr. Qeyami has never been and is not currently in any lawful legal proceeding, which crystalizes the fact that there is no basis at all for his detention.

their entry can contest their deportation in “asylum-only” proceedings.³ The VWP statute—8 U.S.C. § 1187—is silent as to the government’s detention authority while a VWP entrant is in asylum-only proceedings. Several of the federal courts that have examined the legality of the detention of VWP entrants in asylum-only proceedings have concluded that although the VWP statute does not contain a reference to detention at all, § 1226(a) is the default statute that should be applied to justify their detention. *See Malets v. Horton*, No. 4:20-cv-01041-MHH-SGC, 2021 WL 4197594 (N.D. Ala. Sept. 15, 2021) (citing with approval *Hechavarria v. Sessions*, 891 F.3d 49, 57 (2d Cir. 2018) (“Broadly speaking, section 1226 governs the detention of immigrants who are not immediately deportable.”)); *Romance v. Warden York Cnty. Prison*, No. 3:20-cv-00760, 2020 WL 6054933, at *4 (M.D. Pa. July 28, 2020) (§ 1226(a) “is the only [statute] that appears would otherwise be applicable”), *report and recommendation adopted*, 2020 WL 6047594 (M.D. Pa. Oct. 13, 2020); *see also Emila N. v. Ahrendt*, No. CV 19-5060 (SDW), 2019 WL 1123227, at *3 (D.N.J. Mar. 12, 2019) (noting that although asylum-only respondents who entered under the VWP “do[] not fit neatly into any of the normal detention categories,” § 1226 was the only applicable provision governing their detention); *Gjergj G. v. Edwards*, No. CV 19-5059 (SDW), 2019 WL 1254561, at *2–3 (D.N.J. Mar. 18, 2019) (same).

Section 212(f), like the VWP statute, is silent as to detention authority. The unlawful 2025 Proclamation also does not (nor could it) provide for any detention authority. Accordingly, if there is any statute that does authorize Mr. Qeyami’s detention, it must be § 1226(a), under which he is entitled to a bond hearing.

³ The Visa Waiver Program allows citizens of participating countries “to travel to the United States for business or tourism for stays of up to 90 days without a visa.” U.S. Dep’t of Homeland Security, U.S. Visa Waiver Program, <https://www.dhs.gov/visa-waiver-program> (last updated May 2, 2025); *see also* 8 U.S.C. § 1187 (VWP statute). The program allows citizens of designated countries to enter the United States as a nonimmigrant visitor without a visa for a maximum of 90 days. *See* 8 U.S.C. § 1187(a)(1).

3. *Mr. Qeyami's indefinite detention violates his due process rights.*

Neither the Supreme Court nor the Eleventh Circuit, nor any district court in the Eleventh Circuit, has had occasion to speak specifically as to when detention becomes unreasonable or unjustified for a person, like Mr. Qeyami, whose entry is purported to have been suspended. This is most likely because “suspension” of entry would generally not involve detention. *See RAICES v. Noem*, No. 25-5243, slip op. at 26 (Millett, J., concurring) (“Section [212](f)’s plain text allows a President only to suspend ‘entry,’ and not to regulate the removal of those already present in the United States.”). Regardless, general principles of due process are applicable to guard against Mr. Qeyami’s prolonged and unreviewed detention.

The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. The Due Process Clause protects the substantive due process right to be free from unjustified deprivations of liberty as well as the procedural due process right to a neutral forum in which to contest prolonged detention. *Zadvydas*, 533 U.S. at 690.

In *Zadvydas*, the Supreme Court held that the Due Process Clause imposes limitations on the length of unreviewed civil detention. *Id.* at 690–91, 701. The Supreme Court emphasized that “[t]he Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any ‘person . . . of . . . liberty . . . without due process of law.’ Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690 (first quoting U.S. Const. Amend. V (alteration in original), and then citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

In particular, the Court emphasized that, given the “civil” nature of immigration proceedings, “government detention violates [the Due Process] Clause” unless the civil detention

is “in certain special and ‘narrow’ nonpunitive ‘circumstances,’ [supported by] a special justification, such as harm-threatening mental illness, [that] outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* (quoting *Foucha*, 504 U.S. at 80, *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

The Court held that § 1231(a)(6), when “read in light of the Constitution’s demands, limits [a noncitizen]’s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]’s removal from the United States.” *Id.* at 689. A “habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* at 699. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* At that point, the individual must be released because his continued detention would violate both § 1231(a)(6) and the Due Process Clause of the Constitution. *Id.*

Courts have held that in pre-order cases, as well, the due process clause protects a noncitizen from prolonged civil detention, *see Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1213–14 (11th Cir. 2016), *vacated on other grounds*, 890 F.3d 952 (11th Cir. 2018), and that there are two valid purposes for civil detention: to prevent flight and to mitigate the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (2003). “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)) (alterations in original).

“[T]he reasonableness of continued detention ‘must be measured “primarily in terms of the [detention] statute’s basic purpose.’”” *Neziri v. Johnson*, 187 F. Supp. 3d 211, 215 (D. Mass. 2016) (quoting *Reid v. Donelan*, 819 F.3d 486, 497 (1st Cir. 2016)) (alteration in original). The “basic purpose” of 212(f) is to *suspend* entry into the United States for classes of noncitizens who, in the

President's view, threaten public safety. *See RAICES v. Noem*, No. 25-5243, slip op. at 22 (Millett, J., concurring) (distinguishing between suspending *entry* and unlawfully suspending statutory processes for those already in the country). The purpose is not to detain and deport people already in the country. And, this suspension cannot be accomplished in a way that abrogates the right to seek mandatory protective relief. *See id.* at 7 (Millett, J., concurring) (explaining that “[w]ithholding under the INA and the Convention Against Torture are mandatory, not discretionary”).

In the VWP context, courts have been clear that regardless of which statute authorizes detention, due process entitles the detained noncitizen to review of their custody. *See, e.g., Dukuray v. Decker*, No. 18-cv-2898-VB, 2018 WL 5292130, at *2 (S.D.N.Y. Oct. 25, 2018) (court need not determine statutory basis for detention because due process requires a bond hearing even if § 1187 applies); *Bacuku v. Aviles*, No. 15-2543-MCA, 2016 WL 818894, at *6 (D.N.J. Mar. 2, 2016) (same); *Neziri*, 187 F. Supp. 3d at 212, 215 (VWP entrant in asylum-only proceedings whose removal was stayed pending judicial review was entitled under due process to a bond hearing); *Mitka v. ICE Field Off. Dir.*, No. C19-193-MJP-BAT, 2019 WL 5892025, at *3–4 (W.D. Wash. Nov. 12, 2019) (due process entitled VWP entrant to a bond hearing); *Kleinauskaite v. Doll*, No. 4:17-cv-02176, 2018 WL 6112482, at *10, *12 (M.D. Pa. Oct. 9, 2018) (VWP entrant's detention without bond violated due process), *report and recommendation adopted*, 2018 WL 6112482 (M.D. Pa. Nov. 21, 2018).

Mr. Qeyami has now been detained for over six months, including five months since his 212(f) CAT interview. His detention is not justified by a valid state interest, especially given the purported purpose of his detention has been to “suspend” his entry. He is being detained in a manner that deprives him of an opportunity to seek protective relief from deportation. His

detention is related neither to his individual risk of danger to the community nor his particular risk of flight. There has been no finding that he poses any risk to the interests of the United States. There is no likelihood that he will be deported from the United States in the reasonably foreseeable future. Therefore, his detention does not bear a relationship to a state interest and due process requires that his detention be reviewed.

II. Mr. Qeyami Will Suffer Irreparable Harm If He is Transferred or Removed from the U.S. Without Process

1. Mr. Qeyami's transfer would infringe on access to counsel and fundamental principles of fairness.

The court should enjoin Respondents from transferring Mr. Qeyami outside of this Court's jurisdiction. To allow Respondents to do so would deprive him of access to counsel and run afoul of fundamental principles of fairness by taking him out of communication during the time of his transfer and potentially thereafter. Mr. Qeyami has already been subjected to a number of transfers: from CBP custody at the border to Texas and then most recently to Folkston. Even at FIPC, he has been moved from the complex that had been already detaining noncitizens to the newly repurposed D. Ray James building on the same complex.

It is beyond just a mere "possibility" that Mr. Qeyami would suffer this harm absent an injunction. Over the last several months, the U.S. government has devised a number of ways to hold people incommunicado, including in Guantanamo Bay,⁴ in a dangerous prison in El Salvador,⁵ in jails and prisons with no way to speak with attorneys,⁶ in hotels with no ability to

⁴ Camilo Montoya-Galvez, *Trump administration using Guantanamo to detain foreigners from 26 countries, including criminal detainees*, CBS News (July 8, 2025, 8:56AM), <https://www.cbsnews.com/news/trump-guantanamo-detain-foreigners-from-26-countries/> (reporting at least 72 immigration detainees at Guantanamo Bay).

⁵ *Tracking the CECOT Disappearances*, Nat'l Immigr. Law Ctr. (Aug. 19, 2025), <https://www.nilc.org/resources/tracking-the-cecot-disappearances/>.

⁶ See, e.g., *C.M. v. Noem*, Case No. 1:25-cv-23182, Dkt. 86, slip op. at 29 (S.D. Fla. Aug. 18, 2025) (acknowledging that one plaintiff "was transferred out of Alligator Alcatraz on August 11, 2025, before he had a chance to speak with his attorney," and another "had a meeting scheduled for August 4, 2025, but . . . was transferred from Alligator Alcatraz

contact anyone in the outside world,⁷ and even in basements and “holding areas” of federal buildings.⁸ Any transfer of Mr. Qeyami could easily and without stretching the imagination result in his being held somewhere incommunicado at the whim of the Department of Homeland Security.

The majority of Mr. Qeyami’s counsel live within driving distance of Folkston ICE Processing Center, and are able to communicate with him through scheduled virtual teleconferencing and confidential phone calls as well as meet in person if necessary. Transfer could easily impede that ability. *See Suri v. Trump*, No. 1:25-CV-480 (PTG/WBP), 2025 WL 1310745, at *13 (E.D. Va. May 6, 2025) (holding that transfer would impede counsel’s “ability to aid in his representation for the duration of these habeas proceedings”); *Ozturk v. Trump*, 779 F. Supp. 3d 462, 495 (D. Vt.) (“The Court finds that Ms. Ozturk’s presence in Vermont will facilitate her ability to work with her attorneys, coordinate the appearance of witnesses, and generally present her habeas claims”), *aff’d sub nom. Ozturk v. Hyde*, 136 F.4th 382, 394 (2d Cir. 2025); *Arostegui-Maldonado v. Baltazar*, No. 25-cv-2205-WJM-STV, 2025 WL 2280357, at *14–15 (D. Colo. Aug. 8, 2025) (finding that deprivation of access to counsel through transfer is “meaningful and consequential”).

If this Court is not inclined to completely enjoin any transfer, Petitioner requests instead that Respondents be enjoined from transfer without advance notice to the Court to be filed, in

on August 1, 2025, before he could ever meet with legal counsel.”); Brent McDonald, et al., *How Louisiana Built Trump’s Busiest Deportation Hub*, N.Y. Times (July 31, 2025), <https://www.nytimes.com/interactive/2025/07/31/us/ice-deportation-hub-alexandria-louisiana.html>.

⁷ *See J.L.V. v. Acuna*, Case No. 3:25-cv-00669, Dkt. 1 at ¶¶ 34–46, 64–93 (M.D. La. July 31, 2025), Complaint.

⁸ *See* Nidia Cavazos, *Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight*, CBS News (June 7, 2025, 4:16PM), <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; *Barco Mercado v. Noem*, No. 1:25-cv-06568, Dkt. 65 (S.D.N.Y. Aug. 12, 2025), *amended*, Dkt. 70 (S.D.N.Y. Aug. 17, 2025) (ordering certain requirements that were not met for people detained in the holding cells in the federal building housing the immigration court in New York, including access to counsel).

writing, with a stated reason for the transfer and a mandatory waiting period of at least two business days after the filing of that notice for the Court to intervene if necessary. *See E-M- v. Bostock*, No. 3:25-cv-01083, Dkt. 4 (D. Or. June 24, 2025) (ordering the same).

2. Mr. Qeyami's removal absent notice and an opportunity to claim fear would violate the law.

Congress provided, with certain exceptions not relevant here, that DHS “may not remove [a noncitizen] to a country if the Attorney General [(i.e., an immigration judge)] decides that [the noncitizen’s] life or freedom would be threatened in that country because of [the noncitizen’s] race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16(b), 1208.16(b). This form of protection, known as withholding of removal, is mandatory and cannot be denied to eligible individuals in the exercise of discretion. There is a similar mandatory prohibition under the Convention Against Torture [hereinafter, “CAT”] on removal to a country where “there are substantial grounds for believing that he would be in danger of being subjected to torture.” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85, *implemented at* 8 C.F.R. § 1208.18.; *see also* 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1.

It would be unlawful for DHS to deport Mr. Qeyami to either Afghanistan or any other “third country” without the statutorily mandated process to ensure that he is not deported to persecution or torture. Mr. Qeyami has been afforded only an extra-regulatory interview without access to counsel, access to a review process, or the ability to present evidence in support of his claims. This does not meet the requirements established by Congress and by regulation to assert a defense to deportation based on a fear of return. *See* 8 U.S.C. § 1231(b)(3)(C) (withholding of removal statute referring to the processes set out in § 1158(b)(1)(B), the asylum statute, namely a

hearing); 8 C.F.R. § 1208.16 (setting out the requirements for the immigration judge to adjudicate a withholding of removal and CAT claim); 8 U.S.C. § 1225(b)(1)(B) (at bare minimum for deportation, an applicant for admission must be affording an interview with certain procedural protections); 8 C.F.R. § 1208.30 (procedural requirements for credible fear interviews). Any removal without one of these options, which Mr. Qeyami has not had access to, would be unlawful. *See A.A.R.P. v. Trump*, 605 U.S. —, slip op. at 6 (2025) (per curiam) (“We had the power to issue injunctive relief [prohibiting removal] to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter”) (citing 28 U.S.C. § 1651(a).”); *see also Arostegi-Maldonado*, 2025 WL 2280357, at *13 (distinguishing what is jurisdictionally barred under 8 U.S.C. § 1252(g), including execution of removal orders, from permissible enjoining of an unlawful removal).

It is not a remote possibility that DHS could attempt to unlawfully remove Mr. Qeyami to a third country. In recent litigation applying to individuals with final orders of removal under 8 U.S.C. §§ 1229a, 1231(a)(5), or 1228(b) (which Mr. Qeyami does not have), the government contended “that they may remove [noncitizens] to third countries with no possibility for review.” *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 391 (D. Mass.), *appeal docketed*, No. 25-1393 (1st Cir. 2025). DHS has adopted a policy that allows for removal to a third country without any notice or process if DHS has received diplomatic assurances that noncitizens removed from the United States will not be persecuted or tortured. *Id.* at 389–90 (“The March Guidance provides no process whatsoever to individuals whom DHS plans to remove to a country from which the United States has received blanket diplomatic assurances.”). In recent months, DHS has

deported people from the United States to El Salvador,⁹ South Sudan,¹⁰ and Eswatini¹¹ pursuant to this policy.

In sum, “the threatened harm is clear and simple: persecution, torture, and death. It is hard to imagine harm more irreparable.” *D.V.D.*, 778 F. Supp. 3d at 391; *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *7 (C.D. Cal. June 25, 2025) (finding that “[p]etitioner’s removal to a third country without due process . . . is likely to result in irreparable harm” (emphasis in original)).¹² A violation of constitutional rights constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976).

Thus, this Court has jurisdiction to, and should, enjoin Mr. Qeyami’s unlawful removal to Afghanistan or any third country during the pendency of these habeas proceedings.

III. The Harm Mr. Qeyami Would Suffer Outweighs Harm to the U.S. Government and an Injunction is in the Public Interest

When the non-moving party in a motion for preliminary relief is the government, the two final factors merge. *Swain*, 958 F.3d at 1091 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Here, the requested relief—namely, that Mr. Qeyami not be transferred out of this Court’s jurisdiction and not be removed to Afghanistan or a third country without statutorily required

⁹ For example, DHS deported Kilmar Abrego Garcia to El Salvador, despite an immigration judge’s final order granting withholding of removal to El Salvador. Laura Romero et al., *Timeline: Wrongful deportation of Kilmar Abrego Garcia to El Salvador*, ABC News (Aug. 25, 2025 7:49PM), <https://abcnews.go.com/US/timeline-wrongful-deportation-kilmar-abrego-garcia-el-salvador/story?id=120803843>.

¹⁰ *South Sudan says 8 men deported from the US are now in its custody*, Associated Press, (July 8, 2025), <https://apnews.com/article/us-south-sudan-immigration-deportations-b4c657794b2d29cc25fec9bc516ded5>.

¹¹ *5 immigrants deported by the US to Eswatini in Africa are held in solitary confinement*, Politico (July 17, 2025), <https://www.politico.com/news/2025/07/17/5-immigrants-deported-by-the-us-to-eswatini-in-africa-are-held-in-solitary-confinement-00461712>.

¹² Several other courts have issued temporary restraining orders preventing the transfer or unlawful removal of the petitioner during the pendency of the habeas proceedings. *See, e.g., Servellon Giron v. Noem*, No. 2:35-cv-6301 (JXN) (D.N.J. July 10, 2025), Dkt. 12; *Co Tupul v. Noem*, No. CV-25-02748-PHX-DJX (JZB) (D. Ariz. Aug. 4, 2025), Dkt. 6 (enjoining petitioner’s removal from the United States “pending further order of this Court”); *Morales Jimenez v. Bostock*, No. 3:25-cv-00570-MTK (D. Or. Apr. 9, 2025), Dkt. 4 (prohibiting the transfer of petitioner out of the district).

protective process—does no harm to the government and is squarely in the public interest. The public, and therefore the government, has an interest in protecting the rights of people in detention and ensuring the rule of law. *See Nken*, 556 U.S. at 436 (describing the “public interest in preventing [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm”).

Accordingly, because Mr. Qeyami is likely to succeed on the merits of his petition, transferring or removing him without due process would cause irreparable harm, and the public interest supports the requested relief, this Court should grant Mr. Qeyami’s motion for a temporary restraining order pending an outcome in his petition for habeas corpus.

Submitted: August 27, 2025

Respectfully submitted,

/s/ Gracie Willis

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*Admission to SDGA pending with
swearing in scheduled for Aug. 27, 2025.*

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that I filed this Motion for a Temporary Restraining Order using the CM/ECF system, which will send a notice of this filing to all participants in this case.

Dated: August 27, 2025

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