

JON M. SANDS  
Federal Public Defender  
KEITH J. HILZENDEGER #023685  
Assistant Federal Public Defender  
250 North 7th Avenue, Suite 600  
Phoenix, Arizona 85007  
(602) 382-2700 voice  
keith\_hilzendeger@fd.org  
*Attorneys for Petitioner Aghar*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Samir Aghar,  
Petitioner,  
vs.  
Fred Figueroa, Warden  
Respondent

No. 2:25-cv-3147-PHX-KML (CDB)

**Motion for Limited Discovery  
and**

**Contingent Motion for an Extension of Time to File a Reply in Support of the Motion for a Preliminary Injunction and a Temporary Restraining Order**

In his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Mr. Aghar contends that his detention in immigration custody violates the Due Process Clause of the Fifth Amendment for three different reasons. First, it is indefinite because he faces the prospect of being ordered removed to Afghanistan, but ICE will not be able to obtain travel documents to facilitate his return so long as the Taliban rule that country and the United States has no diplomatic relations with it. (Dkt. #1 at 11-14 ¶¶ 20-24) Second, it is arbitrary and capricious because respondents did not consider him for placement in any other setting but a jail once Mr. Aghar turned 18 years old. (Dkt. #1 at 14 ¶¶ 25-27) And third, he is unconstitutionally being denied a bond hearing before a neutral decisionmaker. (Dkt. #1 at 15-18 ¶¶ 28-31) Mr. Aghar filed a motion for a preliminary injunction and a temporary restraining order to support his petition. (Dkt. #3)

The government has responded to the motion. In its response, the government contends (among other things) that Mr. Aghar is not likely to succeed on his second claim because

respondent Noem did in fact consider Mr. Aghar for placement at a facility other than a jail but decided against it on account of the “danger” and “flight risk” that Mr. Aghar, who came to the United States as an unaccompanied alien child and has no history of presenting a danger to anyone either before he arrived here or since and no history of attempting to escape from the foster homes where he was living, supposedly presents. (Dkt. #12 at 10) In support of this dubious contention, the government provided a declaration from Brian Ortega, Assistant Field Office Director with the Phoenix Field Office of U.S. Immigration and Customs Enforcement. (Dkt. #12-1) Mr. Ortega says, “On April 17, 2025, ERO completed an Age-Out Review. Upon completion of the Petitioner’s Age-Out Review, ERO determined the least restrictive placement was detention. The Petitioner’s Age-Out Review determined the Petitioner to be a danger to the community and a flight risk.” (Dkt. #12-1 at 2-3 ¶ 11) Mr. Aghar respectfully asks the Court to order respondents to produce all documentation in their possession that relates to this “Age-Out Review” and the ultimate conclusion that Mr. Aghar should be jailed.

Where “specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is entitled to relief, it is the duty of the court to provide the necessary facilities for an adequate inquiry.” *Bracy v. Gramley*, 520 U.S. 899, 909 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). The facts as they stand now are not fully developed, because the government presumably possesses information that bears on whether Mr. Aghar’s due-process challenge to the decision to jail him once he turned 18 years old is arbitrary or capricious, as he has alleged. These documents, if they exist, are in respondents’ sole and exclusive possession; neither his habeas counsel nor his immigration counsel have them.

Mr. Aghar respectfully asks the Court to order the respondents to furnish these documents to his habeas counsel by the close of business on Monday, September 15, 2025. Mr. Aghar has good cause for the Court to allow discovery. *Cf. Bracy*, 520 U.S. at 909 (guarantee of success on the merits of a habeas claim is not required for allowing discovery). These documents will help this Court to determine whether respondents’ determination that Mr. Aghar is a flight

risk and a danger—despite the fact that he has no history of attempting to flee the foster homes where he had lived and there is no indication that he has posed a danger to anyone before he entered the United States or since—was arbitrary and capricious, as Mr. Aghar has alleged.

Furthermore, Mr. Aghar respectfully asks the Court to extend the deadline for his response to the motion for a preliminary injunction and temporary restraining order to three days following either the denial of this motion for discovery or the date on which he receives the documents he seeks, whichever is later.

A proposed order is being lodged herewith.

Respectfully submitted:

September 10, 2025.

JON M. SANDS  
Federal Public Defender

s/Keith J. Hilzenrader  
KEITH J. HILZENRADER  
Assistant Federal Public Defender  
*Attorney for Petitioner Aghar*