UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

A.M.,

Petitioner,

v.

KEVIN JOYCE, Sheriff, Cumberland County; **PATRICIA HYDE**, Field Office Director; **MICHAEL KROL**, HSI New England Special Agent in Charge; **TODD LYONS**, Acting Director U.S. Immigrations and Customs Enforcement; **KRISTI NOEM,** U.S. Secretary of Homeland Security; **DONALD TRUMP**, President of the United States,

Respondents.

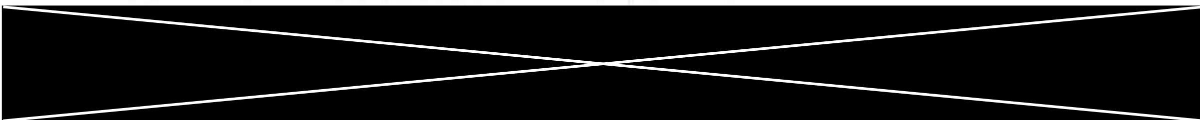
Case No. ______________

PETITIONER'S EMERGENCY MOTION AND MEMORANDUM OF LAW FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner A.M. respectfully requests that the Court grant his Emergency Motion for a Temporary Restraining Order and Preliminary Injunction.

I. INTRODUCTION

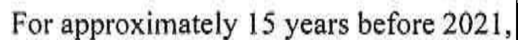
Petitioner A.M. is a citizen and national of Afghanistan in valid special immigrant status.

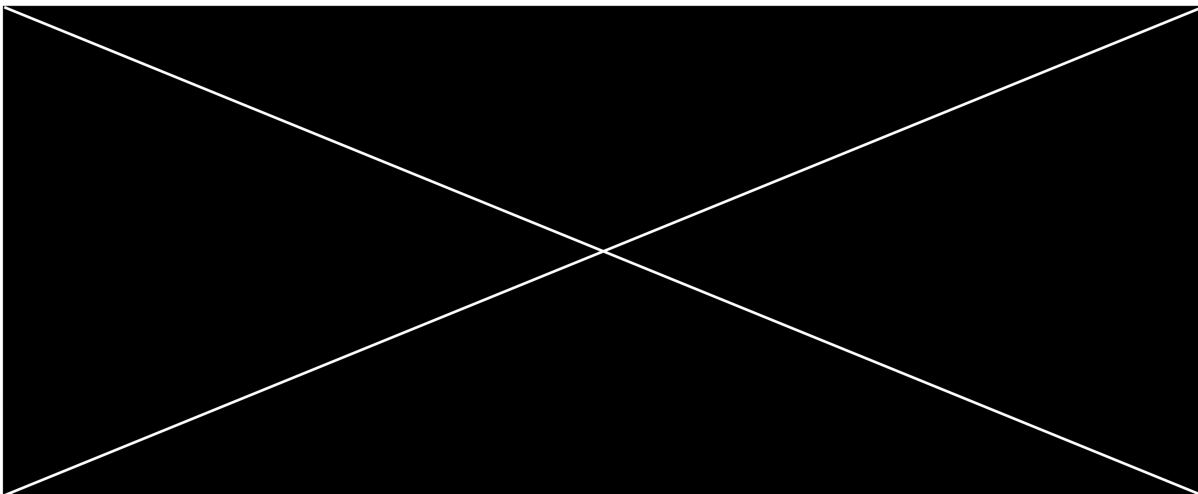


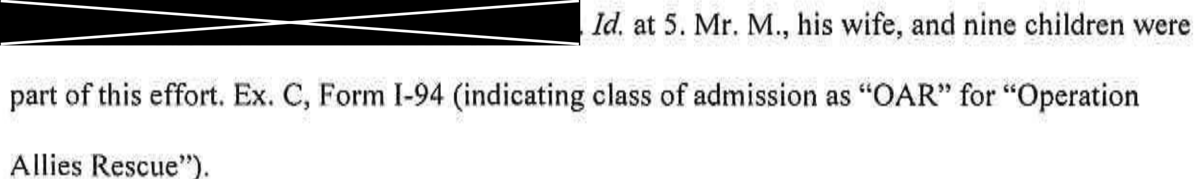
Through his habeas petition, Mr. M. is challenging his unlawful detention. He seeks immediate injunctive relief to protect him from ongoing and imminent harm caused by Respondents' arbitrary and unlawful actions against him. Specifically, Mr. M. seeks: 1) an order enjoining his transfer outside the District of Maine

during the pendency of his habeas proceedings; and 2) a writ of habeas corpus ordering his immediate release during the pendency of his habeas proceedings. In the alternative, he requests an order requiring an Immigration Judge to provide him a bond hearing as soon as possible, at which Respondents will be held to their burden to show a particular risk of flight risk or danger to the community, based on individual factors related to Mr. M.'s personal circumstances.

II. STATEMENT OF FACTS

For approximately 15 years before 2021, 



 *Id.* at 5. Mr. M., his wife, and nine children were part of this effort. Ex. C, Form I-94 (indicating class of admission as "OAR" for "Operation Allies Rescue").

On September 7, 2021, Mr. M., and his family, were paroled into the United States. Ex. C. Rather than being released to the community, they underwent months of vetting at a U.S. military base. On May 12, 2023, Mr. M. was granted COM approval, and on August 11, 2023, his I-360 petition for Special Immigrant Visa was approved. Ex. D, Approval Notices.

Mr. M. was granted parole for a fixed term, along with employment authorization. Ex. C. That term was subsequently extended by the Department of Homeland Security, after an

individualized review. *See* United States Citizenship and Immigration Services, "Re-Parole Process for Certain Afghans Nationals," updated April 23, 2025, https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans-nationals (last visited Dec. 10, 2025) (describing "automatic" re-parole consideration). Mr. M. has complied with all terms of release since his initial parole into the United States. Petition at ¶ 25. The extended term expired on September 7, 2025. *See* Ex. C. On September 8, 2025, USCIS denied Mr. M.'s application for adjustment of status and issued him a Notice to Appear, referring his case to the Immigration Court. Ex. E, Notice to Appear.

On the morning of December 5, 2025, officers acting as U.S. immigration enforcement agents arrested Mr. M. as he was returning from walking his children to their school bus stop, and brought him to the Cumberland County Jail. Petition at ¶ 24.

Mr. M. has medical conditions that require ongoing care, including "left cervical radiculopathy, a right shoulder rotator cuff tear, and chronic PTSD." Ex. B. He is a husband and father to eleven children, including two U.S. citizens who are very young. Ex. F, Letter from RIAC's Anwar Alananzeh and Alisa Miller, Ph.D. Mr. M.'s wife suffers from disabling Major Depressive Disorder and Post-Traumatic Stress Disorder, and relies heavily on her husband. *Id.* Mr. M. is an involved father; he is the primary parent for his children's medical care, including obtaining services for one child diagnosed with autism and another who requires surgery. Ex. G, Letter from pediatrician Samuel J. Cohen, MD (stating that Mr. M.'s "current detention endangers his family's health"). Without Mr. M.'s financial, practical, and emotional support, his family is struggling.

IV. ARGUMENT

To obtain temporary and preliminary injunctive relief, Mr. M. must demonstrate that: (1)

he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Aftermarket Auto Parts All., Inc. v. Bumper2Bumper, Inc.*, Civil No. 1:12-cv-00258-NT, 2012 U.S. Dist. LEXIS 143685, *3 (D. Me. Oct. 4, 2012); *Alcom, LLC v. Temple*, No. 1:20-cv-00152-JAW, 2020 U.S. Dist. LEXIS 79863, at *15 (D. Me. May 6, 2020). When the government is a party, the balance of equities and public interest merge. *Does 1-6 v. Mills*, 16 F.4th 20, 37 (1st Cir. 2021) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Under the circumstances presented herein, no security bond is required under Federal Rule of Civil Procedure 65(c).

A. Mr. M.'s habeas petition is likely to succeed on the merits.

1. Mr. M. is likely to prevail on his due process claims.

Mr. M. has asserted two separate due process claims: first, that the Respondents' decision to detain him without any change in his personal circumstances is unlawful, and not a discretionary decision insulated from judicial review; and second, that Respondents have failed to meet the requirement for mandatory detention by failing to detain him "forthwith" at the expiration of his parole.

a. There have been no negative changes in Mr. M.'s personal circumstances that would warrant detention.

Mr. M. has no criminal history anywhere in the world, was thoroughly vetted before his release into the United States, and has a long history of work with [redacted] [redacted] By statute, the Secretary of Homeland Security "may… in his discretion parole into the United States temporarily under such conditions as he may prescribe … and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was

paroled…" 8 U.S.C. 1182(d)(5)(A). The Secretary thus exercises discretion at two points: in granting and rescinding parole. Other courts recently "have found that just as a grant of parole requires an individualized review, revocation of parole requires a case-by-case assessment to comply with the statute." *Rodriguez Martinez v. Raycraft et al.*, 1:25-cv-01504-RJJ-SJB, Dec. 8, 2025 (collecting cases). The courts may review this, as it is a question of the extent and scope of the agency's discretion, rather than a direct review of the discretionary discretion itself. *See Zadvydas v. Davis*, 533 U. S. 678, 688, 697 (2001) ("while 'may' suggests discretion, it does not necessarily suggest unlimited discretion").

Here, there was no change in circumstances that warranted Mr. M.'s re-detention. Mr. M. has not been charged with or convicted of any criminal offenses. Nor was there any blanket determination that the purposes of parole had been served for a class of people, as in *Doe v. Noem*, 152 F.4th 272, 278–79, 285 (1st Cir. 2025) (Federal Register notice provided reasoning for determination of Cuba, Haiti, Nicaragua, and Venezuela parole termination). In fact, Mr. M. was granted COM approval and I-360 petition approval during the term of his parole. Ex. D. Although USCIS denied Mr. M.'s adjustment of status application, he has the right to seek adjustment of status and asylum in removal proceedings before the immigration court. Mr. M. does not have any final order of removal.

Although Mr. M.'s term of parole elapsed, he was not taken back into custody at that time. He was only detained after President Trump expressed animus towards people from Afghanistan. Revocation of parole is also governed by regulation, 8 C.F.R. 212.5(e). Both the regulation and statute require that either the purposes of the parole have been accomplished, or that an individual decision has been made that neither a humanitarian reason nor public benefit warrants continued parole. Thus, "both common sense and the words of the statute require parole

revocation to be analyzed on a case-by-case basis and that a decision to revoke parole must attend to the reasons an individual noncitizen received parole." *Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 U.S. Dist. LEXIS 135986, at *29 (W.D.N.Y. July 16, 2025) (internal citations, brackets, and quotation marks omitted). Respondents, in failing to make any individualized determination that the purpose of Mr. M.'s parole had been accomplished, violated both of 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e). *Orellana v. Francis*, No. 25-CV-04212 (OEM), 2025 U.S. Dist. LEXIS 196589, at *9 (E.D.N.Y. Oct. 3, 2025).

Mr. M.'s detention is not in the public interest, as he presents no flight risk or danger to the community. *See Mons v. McAleenan*, 2019 U.S. Dist. LEXIS 151174, 2019 WL 4225322, at *2 (D.D.C. Sept. 5, 2019) (examining an ICE directive stating that detention of asylum seekers with established identity is not in the public interest). Individuals who have been conditionally released from detention have a protected interest in their "continued liberty." *Herrera v. Tate*, No. H-25-3364, 2025 U.S. Dist. LEXIS 189999, at *31 (S.D. Tex. Sep. 26, 2025) (quoting *Young v. Harper*, 520 U.S. 143, 147, (1997). By failing to conduct any individualized analysis of Mr. M.'s situation, Respondents violated the Immigration and Nationality Act and the Administrative Procedure Act, and detention in violation of law constitutes a violation of his due process rights under the Fifth Amendment.

b. Mr. M. was not taken into custody "forthwith" at the expiration of his term of parole, and therefore he cannot be subject to mandatory detention pursuant to 8 U.S.C. § 1225.

Mr. M. does not contest that on September 6, 2021, he was paroled to enter pursuant to 8 U.S.C. § 1182(d)(5)(A), and that such parole was issued in the discretion of the DHS Secretary. The Respondents have charged Mr. M. as an "arriving alien" in immigration court, an allegation that would subject him to indefinite, mandatory detention. Noncitizens charged as arriving aliens

are detained under Section 1225(b)(2), and "must remain in custody for the duration of their removal proceedings, while those detained under Section 1226(a) are entitled to a bond hearing before an IJ at any time before entry of a final removal order." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025).

However, the Respondents' treatment of Mr. M. since his period of parole ended on September 7, 2025, supports the conclusion that he is detained pursuant to § 1226(a). In order to detain Mr. M. under § 1225, Respondents were required to return him to custody "forthwith" at the termination of his parole on September 7, 2025. When they did not redetain him until December 5, 2025, they failed to meet the statutory requirement for 8 U.S.C. § 1225(b)(2) detention. Functionally, they released him on his own recognizance during this time. By contrast, individuals detained under § 1225(b) may not be released on recognizance; they may only be paroled into the country under § 1182(d)(5)(A) (release on recognizance is a form of "conditional parole" from detention under § 1226 that is distinct from parole under § 1182(d)(5)(A)). *See Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025))).

Mr. M. can no longer be considered an arriving alien because he has been in the United States for over four years, and has both COM approval and an I-360 petition. *See* Ex. D; *see also Leng May Ma*, 357 U.S. at 187 (*quoting Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)); *accord Zadvydas*, 533 U.S. 678, 693 (2001) ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). Having been present subsequent to the termination of parole for a period of three months, Mr. M. is no longer "on the threshold of initial entry." Rather, he was constructively

released into the United States subsequent to the termination of his 1182(d)(5) parole, and then rearrested and detained pursuant to § 1226(a).

2. Mr. M. is likely to prevail on his claim that his detention is motivated by racial or nationality-based bias, rather than any individual factors about him.

There is no indication that Respondents considered any individual factors about Mr. M. that would lead them to revoke his parole; rather, they detained him shortly after the President made pointed public comments. Following a shooting in Washington, DC, the President described Afghanistan as a "hellhole on earth," and indicated that "We must now re-examine every single alien who has entered our country from Afghanistan through Biden," The White House (@whitehouse), INSTAGRAM, https://www.instagram.com/reel/DRi2H4BAE8h/ (last visited Dec. 6, 2025). The President has instructed the other Respondents to focus on Afghan nationals. *See, e.g.,* Hamed Aleaziz and Nicholas Nehamas, "Immigration Officials Target Afghans for Deportation in Wake of D.C. Shooting," THE NEW YORK TIMES, Dec. 2, 2025, https://www.nytimes.com/2025/12/02/us/politics/afghans-deportation-shooting.html (last visited Dec. 10, 2025) ("…the administration is particularly focused on refugees from Afghanistan. Agency field offices have been instructed to submit daily reports outlining how many Afghans are being removed, arrested and investigated…"). Respondents have targeted Mr. M. solely because of his race and nationality, and detention is unlawful on these grounds.

B. Mr. M. and his family have suffered, and will continue to suffer, irreparable harm absent emergency injunctive relief.

Parties seeking preliminary injunctive relief must also show they are "*likely* to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health*

Scis., L.L.C. v. Vascular Health Scis., L.L.C., 710 F.3d 579, 585 (5th Cir. 2013). This showing has been met here.

Mr. M. seeks an injunction preventing his transfer outside this District while the proceedings are ongoing. This Court has recently found that "removal from this Court's jurisdiction" during a habeas proceeding would constitute "'irremediable' injury." *Moraes v. Joyce et al.*, 2:25-cv-00583-JAW, D.Me., Nov. 21, 2025. Mr. M. also seeks a speedy determination of his eligibility for release, as he is the primary wage earner for his family of thirteen (himself, his wife, and eleven children). *Doe #1 v. Trump*, 957 F.3d 1050, 1061 (9th Cir. 2020) (prolonged separation from family members); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144-45 (9th Cir. 2013) (deprivation of constitutional rights through detention). Mr. M. and his family members currently are suffering and will suffer irreparable harm resulting from his deprivation of liberty, his separation from his family, and his inability to work. Mr. M. is the primary caregiver for his many children, and his family depends on him. Ex. E. He also has medical concerns that are unlikely to be addressed in detention. Ex. B. For these reasons, he has shown irreparable harm.

C. The Balance of Hardships and Public Interest Weigh Heavily in Mr. M.'s Favor.

The final two factors for a injunctive relief—the balance of hardships and public interest—"merge when the Government is the opposing party." *Does 1-6 v. Mills*, 16 F.4th 20, 37 (1st Cir. 2021) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Here, Mr. M. faces weighty hardships, namely the deprivation of his statutory, regulatory, and constitutional rights to equal protection of the law and due process, deprivation of his liberty, and separation from his family members.

Respondents, by contrast, would face no hardship if this Court grants the relief requested. They would save on the cost of detaining Mr. M. unnecessarily, and any costs associated with

providing procedural due process would be minimal if the court grants the injunction. "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Moreover, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice . . . ." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

V. CONCLUSION

For the foregoing reasons, Mr. M. requests that the Court issue: 1) an order enjoining his transfer outside the District of Maine during the pendency of his habeas proceedings; and 2) a writ of habeas corpus ordering his immediate release during the pendency of his habeas proceedings, or in the alternative, an order requiring an Immigration Judge to provide him a bond hearing as soon as possible.

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Dated: December 11, 2025

Respectfully submitted,

Attorneys for Petitioner

/s/ Jenny Vi Beverly
Jenny Vi Beverly ME Bar# 005349
Haven Immigration Law
132 Spring St, Floor 1
Portland, ME 04101
Tel: 207-515-8005
Email: jb@im.law

/s/ Stephanie E.Y. Marzouk
Stephanie E.Y. Marzouk MA BBO#683291*
Marzouk Law LLC
2464 Massachusetts Ave Ste 317
Cambridge, MA 02140
Tel: 617-674-2112
Fax: 617-674-1664
Email: sym@marzouklaw.com
*Motion for *pro hac vice* admission forthcoming