

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Saif Aldin Ahmed Ali Abdalgbar,

Petitioner,

v.

**Kristi Noem, in her official capacity as
Secretary of the United States Department of
Homeland Security;**

**Todd Lyons, in her official capacity as
Attorney General of the United States.**

Respondents.

Civil Action No.: 1:25-cv-01353

ORAL ARGUMENT REQUESTED

EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

I. RELIEF REQUESTED

Petitioner Saif Aldin Ahmed Ali Abdalgbar, by and through undersigned counsel, hereby moves on an emergency, *ex parte* basis for a Temporary Restraining Order (“TRO”) pursuant to Fed. R. Civ. P. 65(b). Petitioner seeks immediate relief enjoining Respondents and all those acting on their behalf from transferring Petitioner out of the Western District of New York during the pendency of his habeas corpus proceeding. Specifically, Petitioner requests that the Court restrain Respondents from removing him from his current detention at the Buffalo Field Office or otherwise transferring him to any facility outside the Western District of New York until final resolution of his pending habeas petition. This TRO is necessary to preserve the Court’s jurisdiction and to prevent irreparable harm to Petitioner’s constitutional and statutory rights. Petitioner also requests that, upon issuance of the TRO, the Court set an expedited schedule for further briefing and a prompt hearing on Petitioner’s habeas petition, as appropriate.

II. FACTUAL BACKGROUND

Petitioner fled genocide and persecution in his native Sudan and entered the United States on or about May 13, 2023. He was initially allowed to remain in the country while pursuing relief after briefly being detained by the Department of Homeland Security (“DHS”) and being released on humanitarian parole. On December 11, 2025, Petitioner was taken into custody by U.S. Immigration and Customs Enforcement (“ICE”) under the authority of the Buffalo Field Office.

On December 11, 2025, Petitioner filed a petition for a writ of habeas corpus in this Court pursuant to 28 U.S.C. § 2241, challenging the legality of his ongoing detention. In his habeas petition, Petitioner asserts that he is not properly subject to mandatory detention and is being detained under the wrong statutory authority. Specifically, Petitioner contends that his detention should be governed by 8 U.S.C. § 1226(a) – which would entitle him to an individualized bond hearing – rather than by the mandatory detention provisions of 8 U.S.C. § 1225(b) (or any other mandatory detention statute). Petitioner has never been provided with any bond hearing or custody redetermination, as DHS maintains that he is ineligible for bond. As a result, Petitioner is deprived of the ability to request a custody redetermination hearing.

Petitioner’s habeas case is currently pending before this Court, which has not yet adjudicated the merits of his claim that his detention is unlawful. Petitioner is at imminent risk of transfer to a different detention facility outside this District, which could occur at any time. Such a transfer – possibly to a far-flung out-of-state location – would severely prejudice Petitioner’s ability to pursue his habeas case and immigration relief, prompting this request for *ex parte* emergency relief.

III. STANDARD

To obtain a TRO, Petitioner must demonstrate: (1) a likelihood of success on the merits (or at least sufficiently serious questions going to the merits); (2) that he will suffer irreparable harm absent relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). Petitioner satisfies all these factors. Moreover, the extraordinary circumstances of this case warrant *ex parte* relief to prevent the very harm Petitioner seeks to avoid.

IV. ARGUMENT

A. Likelihood of Success on the Merits

Petitioner is likely to succeed on the merits of his habeas petition because the government's legal basis for detaining him without a bond hearing is contrary to law. The crux of Petitioner's habeas claim is that he is detained under 8 U.S.C. § 1226(a) (the general immigration detention provision for noncitizens already present in the U.S.), not under the mandatory detention provisions of § 1225(b) (which apply to certain recent arrivals), nor under § 1226(c) (which applies to specific criminal aliens). Multiple courts – including in this District – have recently rejected the government's attempts to classify noncitizens in circumstances like Petitioner's as subject to mandatory detention under § 1225. *See Singh v. Noem*, No. 6:25-cv-06694 (W.D.N.Y. Dec. 2, 2025) (granting habeas petition in part and ordering bond hearing) (collecting cases). Instead, courts have made clear that § 1226 governs the detention of noncitizens who are inside the United States pending their removal proceedings. As the Supreme Court has explained, "Section 1226 governs the detention of noncitizens already in the country pending the outcome of removal proceedings." *See Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 LX 577196 (E.D.N.Y. Nov. 28, 2025) (citing *Jennings v. Rodriguez*, 583

U.S. 281, 289 (2018)). In other words, once an individual has physically entered U.S. territory, even if not formally “admitted”, their detention is handled under § 1226, which permits release on bond, rather than under § 1225(b)’s mandatory custody.

Here, Petitioner entered the U.S. in December 2023 and remained in the country for over two years before ICE detained him. He is “already [present] in the country pending the outcome of [his] removal proceedings,” and thus falls squarely under § 1226. *Jennings*, at 289. Recent decisions confirm this understanding. For example, in *Tumba Huamani v. Francis*, the court held that § 1226 “governs the process of arresting and detaining non-citizens who have already entered the United States pending their removal”. Likewise, in a series of cases from the Western District of New York, Judge Wolford ruled that noncitizens who are present in the United States without having been formally admitted (or who were paroled and thereafter detained) are not subject to mandatory detention under § 1225(b), but instead “are subject to detention under Section 1226.” *See Singh v. Noem*, No. 6:25-cv-06694 (W.D.N.Y. Dec. 2, 2025) (collecting cases). In one such case, the court explicitly found that an individual in Petitioner’s position was entitled to a bond hearing because § 1226 applied rather than § 1225. *Id.*

B. Irreparable Harm Absent a TRO

Absent a TRO, Petitioner will suffer immediate and irreparable harm. If ICE transfers Petitioner out of this District before the Court can adjudicate his habeas petition, the consequences would be dire and irreversible. Courts have repeatedly recognized that transferring a habeas petitioner during the pendency of his case can cause irreparable injury by undermining both the court’s jurisdiction and the petitioner’s ability to access counsel and the courts.

First, a transfer would threaten this Court’s jurisdiction over Petitioner’s habeas case. Petitioner filed his § 2241 petition in this District because he is detained here and his immediate

custodian is located here. Removing him to a distant facility outside the Western District of New York could create a jurisdictional dispute or even divest this Court of the immediate ability to afford relief. At a minimum, it would invite litigation over venue and proper respondent, delaying resolution of Petitioner's core claims. The risk of Petitioner's transfer out of the jurisdiction of this Court would interfere with the Court's jurisdiction and Petitioner's ability to pursue habeas corpus relief. This kind of jurisdictional ouster is the very harm Petitioner seeks to forestall, and it is well-established that such harm is irreparable – there is no way to “undo” an unlawful transfer after the fact insofar as it complicates or prevents the Court from granting effective habeas relief.

Second, transferring Petitioner would severely disrupt his access to his attorneys and the ability to communicate and prepare his case. Petitioner is represented by counsel in this District who have been meeting and conferring with him while he is held at Batavia. If he is suddenly moved to a faraway state (*e.g.*, a remote ICE facility in another region), Petitioner would be separated from the lawyers who know his case, and arranging legal visits or even confidential calls would become significantly more difficult. This disruption of the attorney-client relationship constitutes irreparable harm in itself. As one court noted, transferring a detainee away from his counsel “disrupts the attorney-client relationship and interferes with the orderly administration of pending litigation” *Tomas Lopez v. Bondi*, No. 2:25-cv-02229-JNW-GJL (W.D. Wash. Dec. 11, 2025) (granting temporary restraining order). Petitioner's counsel are intimately familiar with his case and have built trust with Petitioner; forcing Petitioner to proceed with only remote communication or with new counsel would undermine his ability to vindicate his rights in this complex immigration and habeas matter.

Third, a transfer would likely delay or derail Petitioner's ability to obtain timely relief. Petitioner's habeas petition is on a fast track in this Court (with a hearing scheduled and briefing underway). If he is moved, even if the Court retains jurisdiction, logistical challenges could prevent Petitioner from meaningfully participating in the proceedings. Transport to a new facility often entails interruptions in communication, quarantine periods, or lost possessions (including legal paperwork). Petitioner could miss deadlines or be unable to supply evidence due to the upheaval of transfer. These obstacles could effectively moot or at least substantially prejudice his pending claims, compounding the violation of his rights.

In sum, the harm from transfer is concrete, imminent, and irreparable. Once Petitioner is taken out of this District, the Court cannot unring that bell – the jurisdictional complications and loss of counsel access cannot be fully remedied after the fact. The loss of constitutional rights, even briefly, constitutes irreparable injury as a matter of law. Here, Petitioner's due process right to pursue his habeas remedy and his right to counsel in doing so would be irrevocably harmed by a transfer. Indeed, when an alleged deprivation of constitutional rights is at issue, no further showing of irreparable injury is required, since such a violation by itself constitutes irreparable harm. Petitioner meets this factor emphatically.

C. Balance of Equities

The balance of equities overwhelmingly favors Petitioner. On Petitioner's side of the scale is the profound harm described above – interference with his constitutional rights, denial of counsel access, and potential loss of the ability to secure a bond hearing and freedom from unlawful detention. On the government's side, by contrast, a TRO would impose minimal, if any, harm or burden. The requested TRO does not seek to free Petitioner or otherwise alter his custody status; Petitioner only asks to remain in his current place of detention for the short

duration of this litigation. Maintaining the *status quo* – keeping Petitioner at the Buffalo facility where he is already housed – imposes no burden or prejudice on the government. ICE has already decided that the Buffalo is a suitable place to detain Petitioner. Requiring ICE to continue holding Petitioner in the same district merely preserves stability and judicial efficiency and fairness while legal proceedings are resolved.

By contrast, transferring Petitioner at this juncture would inflict substantial prejudice on Petitioner's rights and interests. The government has no legitimate interest in moving Petitioner now, especially not an interest that outweighs Petitioner's fundamental rights. There is no indication that Petitioner's continued detention in Batavia imposes any hardship on Respondents. To the extent Respondents might cite administrative convenience or bed space management, such speculative logistical concerns cannot outweigh the concrete harm Petitioner faces. Courts have recognized that preserving a detainee's access to the courts and counsel should take precedence over bureaucratic preferences about transfer locations. Simply put, the equities tip sharply in Petitioner's favor: the government will suffer no appreciable injury from a TRO maintaining the *status quo*, whereas Petitioner could lose his opportunity to challenge unlawful detention if no TRO issues.

Finally, it must be noted that Respondents' potential interest in transferring Petitioner appears aimed at frustrating his legal remedies. Any such attempt to forum-shop or to remove Petitioner from the reach of this Court would be highly inequitable. Equity supports enjoining actions that would undermine the integrity of judicial proceedings. Here, an order temporarily freezing Petitioner's location is a narrowly tailored equitable measure to ensure this Court can decide the case on the merits.

D. Public Interest

The public interest likewise favors granting the TRO. The public has a strong interest in the faithful execution of immigration laws in a manner consistent with the Constitution. Ensuring that individuals are not detained in violation of federal law or without due process is inherently in the public's interest. There is no public interest in allowing the government to evade judicial review by spiriting detainees away from the courts. To the contrary, the balance of equities and the public interest favor preserving a detainee's ability to access the courts and counsel over speculative logistical concerns in detention operations. Upholding the rule of law and constitutional rights is always in the public interest, even if it imposes modest administrative inconveniences on the government.

Moreover, issuing a TRO to keep Petitioner in this District for a short period promotes the public interest in efficient judicial proceedings and accuracy in decision-making. It allows this Court to resolve the important question presented – *i.e.*, is Petitioner being unlawfully detained without a bond hearing – without interference. The public benefits when courts can decide cases on the merits, especially cases involving individual liberty, rather than have those cases disrupted by unilateral executive actions. Conversely, if Petitioner were transferred (or removed) during litigation, it would undermine confidence in the justice system and suggest that the government can circumvent judicial scrutiny, which is against the public's interest in transparency and fairness.

Because the government is the opposing party, the third and fourth factors (equities and public interest) merge in the analysis. Here, both factors strongly support relief. There is a robust public interest in preventing violations of constitutional rights and maintaining court jurisdiction. No countervailing interest justifies the denial of relief. Therefore, the public interest

is served by granting the TRO to preserve Petitioner's rights and the Court's ability to render a decision.

E. Ex Parte Relief Is Justified (Fed. R. Civ. P. 65(b)(1))

Petitioner seeks this TRO *ex parte* in light of the urgent circumstances and to prevent irreparable harm before it occurs. Federal Rule of Civil Procedure 65(b)(1) permits courts to issue a TRO without written or oral notice to the adverse party if specific facts clearly show immediate irreparable injury will result before the adverse party can be heard, and the movant's attorney certifies why notice should not be required. Both conditions are satisfied here.

As detailed above, there is a substantial risk that if notified of this motion, Respondents would execute Petitioner's transfer immediately, before the Court has a chance to rule. Indeed, courts have acknowledged that notice to Respondents may result in the very transfer and irreparable injury this Court seeks to prevent. This Motion itself is prompted by indications that ICE may move Petitioner imminently; giving advance notice to Respondents could accelerate that harm. Petitioner has no interest in excluding Respondents from the process unnecessarily, but the extraordinary risk of mootness and irreparable injury in this scenario warrants proceeding *ex parte*. Once the TRO is in place, Petitioner will promptly serve Respondents and the U.S. Attorney, and Respondents will have a full opportunity to be heard on a preliminary injunction or on the merits of the habeas petition. *Ex parte* relief is the only way to ensure that this Court can preserve its jurisdiction long enough to decide the case.

Counsel Certification (Rule 65(b)(1)(B)): The undersigned counsel for Petitioner hereby certifies that in my opinion, providing advance notice of this Motion to Respondents would likely result in immediate action by ICE to transfer Petitioner out of this District, thereby causing the very irreparable harm we seek to avoid. Because of this risk and the extremely time-sensitive

nature of the relief requested, Petitioner has called Assistant United States Attorney Adam Khalil and advised the office of this Motion prior to filing. Petitioner will, however, serve a copy of the signed TRO and all supporting papers on the U.S. Attorney's Office forthwith upon issuance of an Order, in accordance with the Court's instructions and Rule 65(b). This certification is made pursuant to Fed. R. Civ. P. 65(b)(1)(B).

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court GRANT this Emergency *Ex Parte* Motion and issue a Temporary Restraining Order preventing Respondents from transferring Petitioner out of the Western District of New York during the pendency of his habeas corpus proceeding. A proposed TRO order is submitted below for the Court's convenience.

Dated: December 11, 2025.

Respectfully submitted,

/s/ Rafael Urena
Rafael Urena, Esq

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the attached documents were filed through the Court's electronic filing system and will be immediately emailed to Assistant United States Attorney for the Western District of New York at adam.khalil@usdoj.gov.

/s/ Rafael Urena