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Attorney for Petitioner

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Aman Mayar Qalandari,)
)
Petitioner,)
)
v.)
)
Christopher Howard, *in his official*)
capacity as Warden of the Eloy Detention)
Center;)
)
Chris McGregor, *in his official capacity* as)
Field Office Director of the Phoenix Field)
Office of Enforcement and Removal)
Operations, U.S. Immigrations and)
Customs Enforcement;)
)
Todd M. Lyons, *in his official capacity* as)
Acting Director, Immigration and Customs)
Enforcement,)
)
Kristi Noem, *in her official capacity* as)
Secretary, U.S. Department of Homeland)
Security; and)
)
Pamela Bondi, *in her official capacity* as)
Attorney General of the United States;)
)
Respondents.)
_____)
)

Case No.

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

INTRODUCTION

Petitioner, Aman Mayar Qalandari, is a citizen and national of Afghanistan. He is a twenty-nine-year-old male who resides in Arizona and was unlawfully detained pursuant to 8 U.S.C. § 1225(b)(2), which was supposed to be a routine reporting appointment with ICE. Mr. Mayar Qalandari was initially detained upon entry into the U.S. in 2023, and released on recognizance pursuant to 8 U.S.C. § 1226(a). Nonetheless, on December 4, 2025, ICE detained Mr. Mayar Qalandari at a routine reporting appointment in Tucson, Arizona, under 8 U.S.C. § 1225(b)(2). Petitioner challenges the legality of his mandatory detention and requests a Temporary Restraining Order for his release from ICE custody, and to prohibit his transfer outside of Arizona.

FACTS OF THE CASE

Mr. Mayar Qalandari a twenty-nine-year-old citizen and national of Afghanistan, resides in Arizona. He initially entered the United States on or about January 30, 2023, and has remained in the country since then. *See* Ex. D (Notice to Appear alleges a January 30, 2023, entry date). After entry in 2023, he was issued a Form I-862, Notice to Appear (“NTA”) in the Immigration Court in Memphis. *See* Ex. D. The NTA alleges that he was present in the United States without admission or parole. At his initial entry in 2023, the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) processed Mr. Mayar Qalandari detained him, and ultimately released him on his own recognizance.

Petitioner presented himself alongside his spouse on December 4, 2025 at a call-in appointment with ICE, and was arrested in Tucson, Arizona. His wife, upon seeing him placed in handcuffs, lost consciousness. She was provided with the choice of staying in ICE detention or being taken to the hospital, and she chose to stay in ICE detention to be with her husband. Petitioner has been separated from his wife since they were transferred from Tucson, Arizona, to Florence, Arizona, and then now Eloy, Arizona.

The NTA charges Mr. Mayar Qalandari with removability as an alien present in the United

States who has not been admitted or paroled, and at the time of application for admission, is not in possession of a valid document pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*

The Petitioner has no criminal record. The Petitioner does not have a final order of removal. He is married to his Afghan national spouse, who was also detained under the same circumstances, and has filed her own petition for a writ of habeas corpus in the District of Arizona.

The Petitioner's removal case is now before the Board of Immigration Appeals after his asylum application was denied by the immigration judge on November 6, 2024. *See Ex. C.* Mr. Mayar Qalandari does not have any active warrants or negative criminal history that would change the circumstances from his initial custody determination made in January 2023, when he was released.

LEGAL ARGUMENT

Mr. Mayar Qalandari does not have a removal order. Mr. Mayar Qalandari is challenging the constitutionality of the statutory framework by which the Respondents are detaining him without a predeprivation hearing. Petitioner asserts that he was unlawfully detained without a predeprivation hearing after he was re-arrested on December 4, 2025.

I. Motion for Temporary Restraining Order and Preliminary Injunctive Relief.

To obtain a temporary restraining order, a petitioner-plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981)). Under similar circumstances, courts within this Circuit have granted petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 where, as here, the petitioner was re-arrested absent a predeprivation hearing.

In a parallel case in this District, *Rosado v. Figueroa*, the court found that “[a]lthough ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that

individual is released from custody they have a protected liberty interest in remaining out of custody.” *Rosado v. Figueroa*, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025). In *Rosado*, the petitioner was re-detained “after six years of being released on recognizance from an initial detention on inspection, without prior notice, a showing of changed circumstances, or a meaningful opportunity to object.” *Id.* at 13. The Court in that case found that she was re-detained in violation of the procedural requirements of the Fifth Amendment. *Id.*

Mr. Mayar Qalandari is likely to succeed on the merits. Mr. Mayar Qalandari's detention is a textbook violation of his Due Process rights.

II. *Mr. Mayar Qalandari will likely succeed on the merits.*

Mr. Mayar Qalandari seeks his immediate release because he is unlawfully and unconstitutionally detained. Mr. Mayar Qalandari who had been initially detained and ordered released in January 2023, and subsequently apprehended in the interior, cannot be detained under 8 U.S.C. § 1225(b)(2)(A), but rather, must be detained under § 1226(a). However, the Petitioner asserts that no arrest was lawful in this case because there was no violation of the conditions initially placed upon release in January 2023.

A line must be drawn between how §§ 1225 and 1226 function when it comes to detention of noncitizens, and it is straightforward: detention authority under §1225 is exercised at or near the port of entry for those seeking admission, and detention authority under §1226 must be used when a non-citizen is arrested in the interior of the United States. *See Martinez v. Hyde*, – F.Supp.3d –, 2025 WL 2084238 at *4 (D. Mass. July 24, 2025)(The line historically drawn between these two sections, making sense of their text and overall statutory scheme, is that section 1225 governs detention of non-citizens “seeking admission into the country,” whereas action 1226 governs detention of non-citizens “already in the country.”); *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025)(“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over

twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border.”); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years).

At Mr. Mayar Qalandari's arrest on December 4, 2025, he was not apprehended while seeking admission at the port of entry. Instead, he was cited for a routine ICE check-in and was arrested. Therefore, Mr. Mayar Qalandari should not have been detained under §1225(b)(2). Furthermore, he should not have been detained at all, absent any change in circumstances relating to his immigration matter. As previously stated, he has no criminal history and no outstanding warrants. He does not have a final order of removal, as his case is currently pending appeal at the Board of Immigration Appeals.

II. *Mr. Mayar Qalandari will Suffer Irreparable Harm*

The harm that flows from the violation of Mr. Mayar Qalandari's constitutional rights is unquestionably irreparable. *See K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013). The deprivation of an alien's liberty is, in and of itself, irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm is virtually presumed in cases like this one where an individual is detained without due process. *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023). (“[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process.”).

Here, Mr. Mayar Qalandari has been living and working in the United States for almost three years without incident. He and his wife, from whom he was separated during the course of his detention, have complied with all conditions of their release and have no criminal history to speak of. He suffers knowing his wife is in pain and in detention, and they cannot easily

communicate with each other as their facility is divided based on sex. Every day he is detained is a day he cannot work to provide for his family, a day of separation from his spouse who is suffering, and a gross violation of his due process rights.

III. *Balance of the Equities and Public Interest*

The “public interest is best served by ensuring the constitutional rights of persons within the United States are upheld.” See *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above, the abrupt detention without bond of Mr. Mayar Qalandari likely violated federal law and his due process. “There is generally no public interest in the perpetuation of unlawful agency action,” and “there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up).

Here, Mr. Mayar Qalandari's continued detention in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer.

IV. *The Court Has Authority to Grant Mr. Mayar Qalandari's Immediate Release Pending the Adjudication of His Habeas Petition.*

As a general matter, writs of habeas corpus are used to request release from custody. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). A habeas court has “the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted.” *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (noting that at “common-law habeas corpus was, above all, an adaptable remedy”).

Release in this case is appropriate. Here, DHS initially arrested and processed Mr. Mayar Qalandari for release in January 2023. Mr. Mayar Qalandari did not violate the terms of his release. The only thing that changed between his release in January 2023 and his re-arrest on December 4,

2025, was an apparent policy departure.

The Petitioner has been detained since December 4, 2025. Every day he is detained is a gross violation of his constitutional protections under the Due Process Clause. Therefore, Petitioner argues that release from detention is the appropriate relief in this case. Alternatively, Petitioner respectfully asks that this Court prevent his transfer while the instant Habeas pends.

B. CONCLUSION

For the foregoing reasons, the Court should grant the instant writ and order Mr. Mayar Qalandari's immediate release from ICE custody.

Dated: December 12, 2025

Respectfully Submitted,

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