

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Feisal Mohamed Omar

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of  
Homeland Security; Department of  
Homeland Security, in her official capacity;

Todd M. LYONS, Acting Director of  
Immigration and Customs Enforcement;  
Immigration and Customs Enforcement, in  
his official capacity;

Peter BERG, Director, St. Paul Field Office,  
Immigration and Customs Enforcement, in  
his official capacity;

Samuel J. OLSON, Field Office Director of  
Enforcement and Removal Operations,  
Chicago Field Office, Immigration and  
Customs Enforcement, in his official  
capacity;

Joel BROTT, Sheriff of the Sherburne  
County Jail in Sherburne County, Minnesota,  
custodian of detainees of the Sherburne  
County Jail,

Respondents.

Case No.: 26-cv-00081-JMB-ECW

**PETITIONER'S MEMORANDUM OF  
LAW IN SUPPORT OF A MOTION FOR  
AN EMERGENCY TEMPORARY  
RESTRAINING ORDER**

**[EXPEDITED HANDLING REQUEST]**

## I. INTRODUCTION

Petitioner Feisal Mohamed Omar, through counsel, brings this instant motion for a Temporary Restraining Order (“TRO”) preventing Respondents from removing Petitioner from the District of Minnesota during the pendency of this habeas corpus petition. Respondents have no lawful basis for detaining Petitioner, a lawful asylum seeker from Somalia, who has been present in the U.S. since June 2017. *See* ECF Doc. 1. Respondent’s previously released Petitioner on bond, and now claim that he is detained under 8 U.S.C. § 1225. Petitioner has lived in Minnesota for the last eight years. *Id.* He has a U.S. citizen partner and child who reside in Minnesota. *See* Petitioner’s Motion for a Temporary Restraining Order. Petitioner’s asylum application has been pending with the Fort Snelling Immigration Court since 2018, and he is scheduled for an individual merits hearing on February 2, 2026. *Id.* Petitioner’s attorney Kelsey Hines, who is representing Petitioner in his asylum case, lives and works in Minnesota. Petitioner seeks injunctive relief to prevent Respondents from removing him from the District of Minnesota until the court rules on the claims set forth in his Petition for a Writ of Habeas Corpus. *See* ECF Doc. 1.

## II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, Feisal Mohamed Omar, is a non-citizen asylum seeker from Somalia. Petitioner entered the United States on or about June 18, 2017. Upon his entry to the United States in 2017, Petitioner was released from custody on a bond of \$15,000 under I.N.A. § 236<sup>1</sup>, 8 U.S.C. § 1226, which allows the Attorney General to release a noncitizen from custody “pending a decision on whether the alien is to be removed from the United States.” *Id.* Petitioner was also issued a notice to appear and placed in full removal proceedings pursuant to 8 U.S.C. § 1229a.

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<sup>1</sup> See Ex. A; ECF Doc. 1.1 Notice of Release and Proof of Service.

See Ex. B. Notice to Appear. Petitioner timely filed an I-589 Application for Asylum and Withholding of Removal on March 27, 2018. Petitioner has never missed a court hearing, or otherwise violated the terms of his release.

In April 2025, Petitioner was detained by local police on allegations of domestic violence. He was held for two days and released after no probable cause was found; no criminal charge was ever filed. Nevertheless, Respondents, as part of “Operation Metro Storm” re-detained Petitioner on December 1, 2025. Respondents have repeatedly falsely claimed that Petitioner is a “criminal illegal alien.”<sup>2</sup> Respondents now appear to justify Petitioner’s detention under 8 U.S.C. § 1225(b)(1)(B)(ii), as he was previously placed in expedited removal proceedings prior to receiving a positive credible fear determination. This interpretation of § 1225(b)(1)(B)(ii) has been rejected repeatedly by federal courts across the United States.<sup>3</sup>

Petitioner has been detained for over 4 weeks, separated from his family. If he is transferred out of the District of Minnesota, he faces limited access to counsel, and further separation from his family and community support here in Minnesota. See Affidavit of Asiya Ali. Furthermore, Petitioner faces significant financial hardship if he is transferred to another state and then ultimately released. *Id.* His partner is already struggling to provide for their family

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<sup>2</sup> See DHS Press Release Dated December 4, 2025.

<https://www.dhs.gov/news/2025/12/04/ice-arrests-worst-worst-criminal-illegal-alien-during-operation-metro-surge>; <https://x.com/DHSGov/status/1996970389381984270> (posted image of Petitioner from the Department of Homeland Security’s official X account.).

<sup>3</sup> See *Quinteros Moran v. Joyce*, No. 25 CIV. 9645 (GBD), 2025 WL 3632895, at \*3 (S.D.N.Y. Dec. 15, 2025). See also: *Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59 (D.N.H. 2025); *A.F.A.M., Petitioner, v. SERGIO ALBARRAN, et al., Respondents. Additional Party Names: Kristi Noem, Pamela Bondi, Todd M. Lyons*, No. 25-CV-10492-AMO, 2025 WL 3752190, (N.D. Cal. Dec. 22, 2025); *A.F.A.M., Petitioner, v. SERGIO ALBARRAN, et al., Respondents. Additional Party Names: Kristi Noem, Pamela Bondi, Todd M. Lyons*, No. 25-CV-10492-AMO, 2025 WL 3752190 (N.D. Cal. Dec. 22, 2025).

while he is detained. *Id.* She is unsure how she will be able to pay for Petitioner's travel back to Minnesota if he is ultimately released in another state. *Id.*

### III. ARGUMENT

In determining whether to grant a Temporary Restraining Order, this Court must consider four factors:

- (1) the probability that the moving party will succeed on the merits;
- (2) the threat of irreparable harm to the moving party;
- (3) the balance between harm to the moving party and the potential injury inflicted on other party litigants by granting the injunction; and
- (4) whether the issuance of a TRO is in the public interest.

*See Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Consideration of these four factors does not require mathematical precision but rather should be flexible enough to encompass the particular circumstances of each case. *See Dataphase*, 640 F.2d at 113. The basic question is whether the balance of equities so favors the moving party “that justice requires the court to intervene to preserve the status quo until the merits are determined.” *Id.* Although the probability of success on the merits is the predominant factor, the Eighth Circuit has “repeatedly emphasized the importance of a showing of irreparable harm.” *Caballo Coal Co. v. Ind. Mich. Power Co.*, 305 F.3d 796, 800 (8th Cir. 2002). In addition, as this Court has previously held, “the equities so favor the movant that justice requires the Court to intervene to preserve the status quo until the

merits are determined.” *Arte v. Bondi*, at \*2, 2025 WL 3496738 (D. Minn. Dec. 5, 2025) (internal quotations omitted). Here, all four factors weigh heavily in favor of injunctive relief.

**A. Petitioner is likely to succeed on the merits of his petition for writ of habeas corpus.**

Writs of habeas corpus “may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.” 28 U.S.C. § 2241(a). “The writ of habeas corpus shall not extend to a prisoner unless...He is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(2).

The federal courts have held that noncitizens are entitled to guarantees of the Fifth Amendment. *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (“all aliens[] are clearly protected by the Fifth and Fourteenth Amendments”). Courts treat Equal Protection and Due Process rights under the Fifth Amendment in the same manner as Equal Protection Claims under the Fourteenth Amendment. *Wienberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975). Due process is only implicated when governmental decisions deprive an individual of “liberty” or “property” interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67, 78 (1976); *see also Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002).

The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be...deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Youngberg v. Romeo*, 457 U.S. 307 (1982). This vital liberty interest is at stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690 (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem”); *Kiareldeen v. Reno*, 71 F.Supp.2d 402, 409-10, 413 (D.N.J. 1999) (holding that, in analyzing due process in the immigration context, the first factor in the procedural due process analysis, “the petitioner’s private interest in his physical liberty, must be accorded the utmost weight.”).

Petitioner is likely to succeed in demonstrating that he is in custody in violation of the Constitution and laws of the United States. *See* 28 U.S.C. § 2241(c)(3). In addition to violating the Constitution, Respondents are also violating the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 and 101 *et. seq.* and 8 U.S.C. §§ 1101 *et. seq.* by denying Petitioner his constitutional right to due process, arbitrarily and capriciously, thus exceeding their authority under the Immigration and Nationality Act (“INA”).

Petitioner was not arrested for a legitimate purpose and continues to be held without a legitimate purpose. Petitioner’s detention on December 1, 2025 as part of DHS’ “Operation Metro Storm” appears to have been for political purposes, and to create headlines to further Respondent’s false narrative that they are arresting “the worst of the worst.” *See Supra* at footnote 2. Indeed, Respondent’s previously explicitly released Petitioner on a surety bond, under Section 236 on the I.N.A., 8 U.S.C. § 1226. No circumstances exist to justify the Respondent’s redetention of Petitioner, other than Respondent’s novel legal position that

Petitioner is now somehow detained under 8 U.S.C. § 1225, a position rejected repeatedly by this court, and courts across the country. See *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (same); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA (D. Nev. Sep. 5, 2025); *Eliseo A.A. v. Olson*, No. 25-CV-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, No. 25-3035 (JWB/LIB), Doc. No. 226 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v. Noem*, No. 0:25-cv-04584 (JWB-DJF), Doc. No 10. (D. Minn. December 18, 2025).

Petitioner is likewise not detained under the expedited removal provisions of § 1225(b)(1)(B)(ii). See *Supra* at footnote 3.

#### **B. Petitioner Faces Irreparable Harm if the Court Does Not Grant a TRO**

As discussed above, Petitioner faces irreparable harm if he is transferred out of the District of Minnesota. Petitioner will lose access to his immigration counsel, he will face further

physical separation from his U.S. citizen partner and two-year old son, and, if ultimately released, he will be forced to come up with the funds to travel back to Minnesota. These injuries are “concrete and imminent and...cannot be remedied after they occur.” *Arte v. Bondi*, at \*2, 2025 WL 3496738; *See also Victor V. v. Bondi*, et al., No. 25-cv-4480 (JMB/ECW) (D. Minn. Dec. 4, 2025) (“Given the uncertainty in these proceedings to date, justice requires keeping [Petitioner] in this District until the merits of his underlying habeas action can be determined.”)

**C. The Balance of Harm to Petitioner Compared to the Burden Placed on the Government Overwhelmingly Weighs in Favor of Petitioner**

Petitioner’s harms, as discussed above, are weighty; including further separation from his family, loss of access to counsel, and additional financial burdens to pay for the costs of his travel back to Minnesota, should the habeas be granted. *See Escalante v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2212104, at \*2 (D. Minn. July 31, 2025) Possible injuries to the government, should the restraining order be granted, are minimal and possibly nonexistent. For the aforementioned reasons, the irreparable harm that will occur should ICE remove Petitioner out of the District clearly outweighs any burden to Respondents in moving Petitioner.

**D. The Issuance of a TRO is 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 Torres v. U.S. Dep’t of Homeland Sec.*, 2020 WL 3124216, at \*9 (C.D. Cal. Apr. 11, 2020) (“[T]he public has an interest in the orderly administration of justice[.]”). Respondents unlawfully detained Petitioner as part of an operation in Minnesota orchestrated to gain headlines, and push a false narrative. Respondents now allege that Petitioner is detained under the mandatory provisions of 8 U.S.C. § 1225, despite previously

releasing him on bond. Federal courts across the country have rejected the government's unlawful interpretation of the statutes authorizing release from detention, and continue to do so. "Preserving [Petitioner's] access to judicial review and preventing unlawful detention are compelling issues of public importance." *Victor V. v. Bondi et al* at \*1, No. 25-cv-4480.

Allowing Respondents, who have already violated the law by detaining Petitioner, to inflict further harm on Petitioner by transferring him out of the District, weighs *against* the public interest. Additionally, allowing Respondent to waste additional taxpayer money to transport Petitioner out of the district is not in the public interest.

#### IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant temporary relief and enjoin Respondents from moving Petitioner out of the District of Minnesota during the pendency of this habeas corpus petition.

Dated: 01/08/2026

/s/ Evangeline Dhawan-Maloney  
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**Certificate of Compliance**

Pursuant to Local Rule 7.1(f)(2), I certify that this memorandum complies with the limits in LR 7.1(f) and with the type-size limit of LR 7.1(h). I further certify that this memorandum contains 2,413 words, and was created using Microsoft Word 2024.

Date: 01/08/2026

/s/ Evangeline Dhawan-Maloney  
Evangeline Dhawan-Maloney