

DETAINED
Magistrate Judge Grady J Leupold

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE, WASHINGTON

MASSERAY SIBY,

Petitioner,

v.

DREW BOSTOCK, *et al.*;

Respondents.

CASE NO.: 2:26-cv-00993-GJL

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL**

AGENCY FILE NO: A 

PETITIONER'S MOTION FOR
TRO AND STAY OF REMOVAL

CASE NO.: 2:26-CV-00993-GJL

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**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL**

I. Motion

Under FRCP 65 and 5 U.S.C. §705, the petitioner moves this Court for an Emergency Temporary Restraining Order and Stay of Removal, ordering Respondents to immediately return Petitioner to this judicial district, preventing his removal from the United States and any subsequent transfer to another detention facility outside of the Western District of Washington while these proceedings are pending.

Basis for Motion

Mr. Siby, by and through his attorney of record, filed a Petition for Habeas Corpus yesterday, March 24, 2026 at 2:09pm PST. At 11:27am PST this morning of March 25, 2026, counsel received notice that ICE had placed Mr. Siby on a flight to Arizona on March 24, 2026 at 11:52am. The time of that flight's actual departure or landing are unknown at the time of this filing. According to counsel for the Respondent's, it is their position that due to the timing of the flight and the filing of this lawsuit, this Court does not have jurisdiction over Mr. Siby. Petitioner disagrees because it has not been established as a matter of law that Mr. Siby was outside the jurisdiction of this judicial district at the time of filing, and Petitioner contends that he remained within the jurisdiction until he arrived in a different jurisdiction whenever the vessel he was on landed in Arizona. The scheduling order filed in this matter therefore does not

1 address this issue. Accordingly, Petitioner moves this Court to assume jurisdiction in this matter
2 and order Respondents to return Mr. Siby to Washington State forthwith.

3
4 **II. Argument**

5 ***A. Standards for Temporary Restraining Order***

6 To grant a Temporary Restraining Order, the petitioner must meet one of two tests. The
7 more recent test, known as the *Winter* test, requires the petitioner to prove as follows:

- 8 [1] that he is likely to succeed on the merits,
9 [2] that he is likely to suffer irreparable harm in the absence of
10 preliminary relief,
11 [3] that the balance of equities tips in his favor, and
12 [4] that an injunction is in the public interest.

13 *Sherley v. Sibelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (alteration in original, quoting *Winter*
14 *v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The same standard applies to both
15 temporary restraining orders and to preliminary injunctions.” *Sterling Commercial Credit-*
16 *Michigan, LLC v. Phoenix Industries I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011) (quoting
17 *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009)).

18 The traditional test, which remains viable in the Ninth Circuit, is known as the “sliding
19 scale” test and requires the petitioner to prove “serious questions going to the merits” and “a
20 hardship balance that tips sharply toward the petitioner.” *Alliance For The Wild Rockies v.*
21 *Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As under the *Winter* test, the petitioner must also show
a likelihood of irreparable injury and that the injunction is in the public interest. “Under this
approach, the elements of the preliminary injunction test are balanced, so that a stronger

1 showing of one element may offset a weaker showing of another.” *Alliance For The Wild*
2 *Rockies*, 632 F.3d at 1131.

3 Mr. Siby meets both of these tests.

4 ***B. Mr. Siby is likely to succeed on the merits and has raised serious legal questions.***

5 As a threshold matter, as argued above, though Respondents moved Petitioner to
6 Arizona yesterday, under information and belief Mr. Siby remained in this judicial jurisdiction
7 at the time of filing so this court has jurisdiction to hear this motion and the underlying habeas
8 claim.

9 As alleged in his Petition, Mr. Siby is entitled to habeas relief, specifically immediate
10 release from detention, because his removal is not reasonably foreseeable and his continued
11 detention violates the Due Process Clause of the Fifth Amendment. *Zadvydas v. Davis*, 533
12 U.S. 678 (2001); *See* Dkt. 1. Though Mr. Siby has a final order of removal from 2008, both
13 Mr. Siby and Respondents have been unsuccessful in obtaining travel documents from Mr.
14 Siby’s native Mauritania since Mauritania apparently has no way to verify his identity or
15 Mauritanian citizenship.

16 Moreover, Mr. Siby has been detained in excess of six months, which under *Zadvydas*,
17 is unreasonable. *Id.* at 701. Due process requires a noncitizen be detained under § 1231 no
18 longer than “a period reasonably necessary to bring about . . . removal from the United States.”
19 *Id.* at 689. Detention is presumptively reasonable for six months after the removal period.
20 “After this 6-month period, once the [noncitizen] provides good reason to believe that there is
21 no significant likelihood of removal in the reasonably foreseeable future, the Government must

1 respond with evidence sufficient to rebut that showing.” *Id.* at 701. If the government fails to
2 rebut the noncitizen’s showing, the noncitizen is entitled to habeas relief. Accordingly, Mr.
3 Siby is likely to succeed on the merits of his habeas claims and has raised serious questions
4 about his eligibility for immediate release from immigration detention.

5 ***C. Mr. Siby faces irreparable harm, and a hardship balance tips sharply toward him.***

6 When assessing irreparable harm and the balancing test regarding a motion for a
7 temporary restraining order, the Court should weigh the “competing claims of injury” and
8 “consider the effect on each party of the granting or withholding of the requested relief.”
9 *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 24 (2008).

10 While Plaintiff faces real and irreparable injuries without relief, there is relatively little
11 harm or public interest weighing against an order requiring Respondents to return Mr. Siby to
12 Washington State. It is plain to see that Mr. Siby faces irreparable harm given that Respondents
13 have already moved him outside of this jurisdiction. Mr. Siby has been at the Northwest Ice
14 Processing Center (“NWIPC”) for the past several months and being moved to a different
15 location where he has no contacts and no access to legal counsel places him at a severe
16 disadvantage and establishes irreparable harm. Counsel has been unable to contact Mr. Siby,
17 whose exact whereabouts are unknown. As of this morning, he was not showing up in the
18 online detainee locator and as of the time of this filing, the online locator states he is detained
19 at Port Isabel Detention Center in Los Fresnos, Texas.

20 The government violates due process when its actions interfere with detained
21 immigrants’ ability to obtain and communicate with counsel. *Orantes-Hernandez v.*

1 *Thornburgh*, 919 F.2d 549 (9th Cir. 1990). Mr. Siby's inability to communicate with his legal
2 counsel while Respondents move him around the country is not only a hardship, moving him
3 may be a further violation of his due process rights. *Id.* Mr. Siby qualified for pro bono
4 representation with the Council on American Islamic Relations Washington State Chapter,
5 which only operates in Washington State. Mr. Siby has no ability to pay an attorney; he is
6 illiterate with very limited English skills. Accordingly, it is extremely unlikely that Mr. Siby
7 will be able to locate legal counsel or represent himself in habeas proceedings in Arizona,
8 Texas or wherever Respondents decide to send him next. It is established as a matter of law
9 that his detention has been unreasonably long and every day of continued detention, as well as
10 the uncertainty and limbo of transfer to a different facility, is a significant hardship. He faces
11 ongoing, punitive detention under this administration.

12 Meanwhile, there is some administrative burden and cost to Respondents to return him
13 to Washington, but the hardship and injuries to Mr. Siby's outweigh that burden.

14 ***D. The balance of equities tips in favor of Mr. Siby, and an injunction is in the public***
15 ***interest.***

16 The remaining two factors for an injunction are the same under both legal tests, and
17 they both favor Mr. Siby. When the government is a party, the balance of equities and public
18 interest factors are merged. *E. Bay Sanctuary Covenant v. Trump*, 993 F.3d 640 at 668 (9th Cir.
19 2021), (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). It is unclear, what if any, interest
20 Respondents have in keeping Mr. Siby in Texas other than to deprive him of pursuing this
21

1 litigation and avoiding the expense of flying him back here. Neither of those interests are
2 compelling.

3 The equities and public interest also tip in favor of Plaintiff because of his particular
4 vulnerability as an illiterate individual with minimal English language skills and inability to
5 represent himself. See *supra*, Part II.C. It is critical that he have access to legal representation to
6 proceed with his habeas claim and obtain freedom from the government's unreasonably long
7 detention.

8 Once a plaintiff establishes they are entitled to injunctive relief, the district court has
9 broad discretion in fashioning a remedy. *Lemon v. Kurtzman*, 411 U.S. 192, 200, (1973) ("In
10 shaping equity decrees, the trial court is vested with broad discretionary power; appellate review
11 is correspondingly narrow"). This court should exercise its discretion to order the following,
12 most importantly the immediate return of Mr. Siby to the status quo by returning him to NWIPC
13 in Tacoma, Washington.

14 III. Conclusion

15 1. Under FRCP 65, the petitioner moves this Court to issue an Emergency
16 Temporary Restraining Order and Stay of Removal:

- 17 1. Ordering Respondents to immediately return Mr. Siby to the Western
18 District of Washington.
- 19 2. Enjoining and restraining the Respondents and all of their respective
20 officers, agents, servants, employees, attorneys and persons acting on
21 their behalf in concert or in participation with them from:

- a. Removing or deporting Mr. Siby from the United States while these proceedings are pending;
- b. Upon his return to this judicial district (presumably to NWIPC in Tacoma, Washington), transferring Mr. Siby to any other detention facility during the pendency of these proceedings.

WHEREFORE, for the reasons set forth in his Petition for Writ of Habeas Corpus, and in this Motion the Petitioner respectfully requests this Court:

1. Grant this Emergency Motion for Temporary Restraining Order and Stay of Removal today;
2. Enter the Proposed Order Granting Petitioner's Emergency Motion for Temporary Restraining Order and Stay of Removal today; and
3. Grant such other and further relief as justice may require.

Dated: March 25, 2026

/s/Anessa Novasio
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CERTIFICATE

I certify that this memorandum contains 1678 words (excluding the caption, tables of contents and authorities, signature block, and certificate), in compliance with the Local Civil Rules.

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