IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

AHMER SHAIKH, Petitioner, v. TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, *et al.*, Respondents.	)	Case No. 1:25cv811 (RDA/WEF)

MEMORANDUM OF LAW
IN OPPOSITION TO PETITIONER'S MOTIONS FOR A TEMPORARY RESTRAINING ORDER

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Respondents, through undersigned counsel, hereby respectfully submit this Memorandum of Law in opposition to Petitioner's motions for a temporary restraining order (Dkt. No. 7-8) in the above-captioned habeas action.

INTRODUCTION

Petitioner Ahmer Shaikh (hereinafter, "Petitioner"), is a native and citizen of Pakistan who petitions this Court for a writ of habeas corpus, exclusively seeking release from civil immigration detention At the current time, subsequent to his service of a twenty-year term of incarceration for second-degree murder, Petitioner is in civil immigration detention in order to facilitate the execution of his final order of removal to Pakistan. In two emergency motions, however, Petitioner now seeks new and different relief -- a stay of the execution of his final removal order due to what he terms a challenge to the "veracity of his travel document" to Pakistan. *See* Dkt 7 at 2; *see also* Dkt. 8 at 2.

The Motions should be denied because they seek relief above and beyond that which Petitioner has sought in his underlying habeas petition, and, perhaps more importantly, this Court

lacks jurisdiction to hear any challenge to the propriety of Petitioner's final order of removal or any claim arising from the execution of an order of removal. Congress has barred judicial review in the district courts of claims that arise out of the commencement, adjudication, and enforcement of removal proceedings. *See* 8 U S C. § 1252(g); *see also id.* § 1252(a)(5). Because the Motions lack any jurisdictional basis, they should be dismissed.

BACKGROUND[1]

Petitioner is a native and citizen of Pakistan who has been subject to a final order of removal since March 2021, premised upon his conviction for second degree murder, for which he served a twenty (20) year term of incarceration *See* Pet. ¶ 18; *see also id* (Dkt. No. 1-2), at 53. In his Petition for a Writ of Habeas Corpus, Petitioner exclusively challenges his continued detention in ICE custody, alleging that his continued civil immigration detention runs afoul of federal statute (Count I), Pet. ¶¶ 95-103, and the Due Process Clause, *id* ¶¶ 104-10 (citing *Zadvydas v. Davis*, 533 U.S. 678 (2001)). However, in two subsequent emergency motions seeking temporary restraining orders, Petitioner asks for this Court to review, and enjoin, his removal – solely because he disputes the "veracity of his travel document" to Pakistan. *See* Dkt 7 at 2; *see also* Dkt. 8 at 2.

STANDARD OF REVIEW

1. Petitioner seeks a temporary restraining order—"an extraordinary remedy never awarded as of right." *Winter v Natural Res. Def. Council, Inc* , 555 U.S. 7, 24 (2008). Such a request "involv[es] the exercise of a very far-reaching power to be granted only sparingly and in limited

[1] Respondents reserve the right to challenge Petitioner's version of the facts were litigation to proceed. *See Adams v Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). In addition, Respondents have only included facts here that are relevant to the Petition and Motions for TROs and, unless the Court directs otherwise, will not address other aspects of Petitioner's immigration proceedings.

circumstances." *Sarsour v. Trump*, 245 F. Supp 3d 719, 728 (E.D. Va. 2017) (Trenga, J.). To be eligible for a temporary restraining order, Petitioner must demonstrate each of the following factors by a "clear showing": (1) a likelihood of success on the merits; (2) irreparable harm in the absence of preliminary injunctive relief; (3) the balance of equities between the parties tips in favor of the party seeking such relief; and (4) the public interest favors equitable relief. *Winter*, 555 U.S. at 20, 22. The requirement for showing a clear likelihood of success on the merits "is far stricter than a requirement that the [petitioner] demonstrate only a grave or serious *question* for litigation." *Sarsour*, 245 F. Supp. 3d at 729 (alterations and quotation marks omitted) (emphasis in original).

2. A federal court "generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction) " *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007) (internal citation omitted). Federal Rule 12(b)(1) serves as the appropriate vehicle to challenge the court's subject-matter jurisdiction. *See, e g , Coulter v. United States*, 256 F. Supp. 2d 484, 486 n 3 (E.D. Va. 2003), *aff'd*, 90 F. App'x 60 (4th Cir 2004). Although this Court may utilize the allegations contained within the four corners of the plaintiff's complaint as evidence in determining whether it possesses jurisdiction over a matter, it may also consider other evidence outside the pleadings *See Richmond, Fredericksburg, & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991).

ARGUMENT

I. THE MOTIONS SHOULD BE DENIED BECAUSE THEY SEEK RELIEF DIVORCED FROM THE LIMITED NATURE OF THE UNDERLYING PETITION.

At the outset, this Court will note that Petitioner's underlying petition for a writ of habeas corpus, for good reason, *see infra* Part II, challenges neither the validity of his final removal

order or the United States's authority to effectuate it. Nevertheless, in these new Motions, that is the exclusive premise of Petitioner's challenge, and the exclusive nature of the relief that he seeks from this Court But as the Fourth Circuit has held, a litigant can only seek emergency equitable relief to preclude the specific harm "in which the movant contends it was or will be harmed through the illegality alleged in the complaint." *Omega World Travel, Inc. v. Trans World Airlines*, 111 F 3d 14, 16 (4th Cir. 1997); *see also Pac. Radiation Oncology, LLC v. Queen's Med. Ctr* , 810 F.3d 631, 636 (9th Cir. 2015) (holding that there must be a "sufficient nexus between the claims raised in a motion for injunctive relief and the claims set forth in the underlying complaint itself," and "[a]bsent that relationship or nexus, the district court lack authority to grant the relief requested").

The exclusive premise of Petitioner's operative pleading here – his petition for a writ of habeas corpus – is a challenge to his *civil immigration detention*, not the propriety of his removal Indeed, should petitioner's final removal order be executed, he will have gained the very relief that he seeks in his petition – release from detention. *See, e g , Pankov v. ICE*, 2021 WL 4076692, at *1 (E D. Va. June 22, 2021) ("The issues in Pankov's Habeas Petition are moot as there remains no case or controversy due to Pankov's release and removal "). And as such, the relief that petitioner seeks in his instant emergency motions is in direct conflict with the relief that he seeks in his underlying petition For that reason alone, this Court should deny Petitioner's motions

II. THE MOTIONS SHOULD BE DENIED BECAUSE THE COURT LACKS JURISDICTION TO CONSIDER THEM.

Petitioner cannot establish this Court's jurisdiction over his motions for a temporary restraining order.

1 This Court lacks jurisdiction to grant the Motions seeking emergency relief because it is barred by 8 U.S.C § 1252(g). Section 1252(g) divests the district courts of jurisdiction to entertain "any cause or claim by . . . any alien *arising from* the decision by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." *Id* (emphasis added). The jurisdiction-stripping language contained within § 1252(g) is extraordinarily broad, precluding jurisdiction over "*any* cause or claim" "notwithstanding any other provision of law." 8 U.S.C. § 1252(g) (emphasis added); *see United States v. Gonzales*, 520 U.S. 1, 5 (1997) (holding that the "word 'any' has an expansive meaning"). The Fourth Circuit has thus interpreted § 1252(g) to cause a universal divestiture of district court jurisdiction over the three types of actions listed in the section:

> Because "[e]xcept as otherwise provided in this section," connotes a singular exception to the general rule in § 1252(g) that jurisdiction is stripped from the enumerated claims, we interpret "any" to mean "all," and, thus, "notwithstanding any other provision of law" to mean that *all other jurisdiction-granting* statutes, including § 2241, *shall be of no effect.*
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> In sum, Congress could hardly have been more clear and unequivocal that courts shall not have subject matter jurisdiction over claims arising from the actions of the Attorney General enumerated in § 1252(g) other than jurisdiction that is specifically provided by § 1252.

Mapoy v. Carroll, 185 F.3d 224, 229-30 (4th Cir. 1999) (emphasis added) (citations omitted); *see also Hamama v Adduci*, 912 F 3d 869, 874 (6th Cir. 2018) (holding that under § 1252(g) federal district courts lack jurisdiction to grant a stay of removal); *Ashqar v. Hott*, 2019 WL 2712276, at *3 (E D. Va. 2019) (Ellis, J) (noting that the holding of *Mapoy* is "unmistakenly clear"); *Artiga-Carrero v. Farrelly*, 270 F. Supp. 3d 851, 876-77 (D Md 2017) ("Although § 1252(g) applies only to a narrow set of decisions or actions by the government, it imposes an *absolute* bar to federal court jurisdiction over any claim arising from such a decision or action"

(emphasis in original)). The Supreme Court itself has recognized that once the specific immigration decision or action is found within the "scope of the bar" (*e g.*, a challenge to the "execut[ion of] removal orders"), "jurisdiction is precluded regardless of what any *other* provision or source of law might say " *Kucana v Holder*, 558 U.S. 233, 238 n.1 (2010) (emphasis in original).

2. Multiple decisions in the Fourth Circuit and elsewhere have held that under 8 U.S.C. § 1252(g), federal district courts do not have subject matter jurisdiction over habeas petitions regarding the execution of removal orders. *See Futeryan-Cohen v. U.S. Immigration & Naturalization Serv.*, 34 F. App'x 143, at *1 (4th Cir. May 15, 2002) (per curiam) (under 8 U.S.C. § 1252(g), district court lacked jurisdiction over habeas petition regarding removal order) (citing *Mapoy*, 185 F.3d at 228-31, and *Reno v Am -Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999)); *Ashqar*, 2019 WL 2712276, at *3 (under 8 U.S.C. § 1252(g), district court lacked jurisdiction over habeas petition seeking a stay of removal, citing *Mapoy* and *AADC*); *Guardado v. United States*, 744 F. Supp. 2d 482, 488 (E.D. Va. 2010) ("[F]ollowing the REAL ID Act, Pub. L 109-13, 119 Stat 302 (2005), habeas corpus is now explicitly excluded by § 1252(g) from district courts' subject-matter jurisdiction."); *see also Rivas-Melendrez v. Napolitano*, 689 F.3d 732, 738 (7th Cir. 2012) ("Sections 1252(a)(5) and 1252(g) together make clear that the district court lacked jurisdiction to hear [Petitioner's] habeas petition[ ]"); *Hutton v West Virginia*, 2014 WL 856489, at *7 (N.D W. Va. Mar. 5, 2014) (citing § 1252(g) and holding "to the extent that the petition is construed as challenging the validity of [petitioner's] removal proceedings, including any removal order against him, the INA's jurisdictional provisions clearly bar this court's granting such relief"). Thus, § 1252(g) precludes this Court's jurisdiction over the emergency Motions.

3. In addition, the Court lacks authority to grant the emergency Motions under 8 U.S.C. § 1252(a)(5), which requires that "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal." Numerous courts have held that § 1252(a)(5) precludes the district court's jurisdiction to review the merits of a petition challenging a removal order. *See Fernandez v Keisler*, 502 F.3d 337, 346 (4th Cir. 2007) (citing § 1252(a)(5) and holding that REAL ID Act "expressly eliminated district courts' habeas jurisdiction over removal orders"), *Jahed v Acri*, 468 F.3d 230, 233 (4th Cir. 2006) (citing § 1252(a)(5) and holding: "The REAL ID Act eliminated access to habeas corpus for purposes of challenging a removal order."); *Muka v. Baker*, 559 F.3d 480, 484 (6th Cir 2009) (affirming district court dismissal for lack of subject matter jurisdiction of habeas petition seeking to challenge legality of removal order because 8 U.S C. § 1252(a)(5) "provides an exclusive mechanism for review of such decisions via petitions for review in the court of appeals"); *Albores Flores v Hartnett*, 2010 WL 3283491, at *4 (D. Minn Aug. 18, 2010) (citing § 1252(a)(5) and holding that "many district courts have held that § 1252 necessarily deprives district courts of jurisdiction to review the merits of a habeas petition challenging a removal order"); *Aime v. Dep't of Homeland Security*, 2005 WL 1971894, at *1 (W D N Y. Aug. 16, 2005) (citing 8 U S C § 1252(a)(5) and holding that "since petitioner challenges an order of removal . . this Court has no jurisdiction to review the merits of the petition").

Because it is well-settled that Congress has precluded this Court's jurisdiction over any habeas petition challenging a removal order, the emergency TRO motions should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny the Motions.

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Respectfully submitted,

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By: /s/

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