

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF LOUISIANA
WESTERN DIVISION

MUHAMMAD IMRAN,

Petitioner,

v.

MELLISSA HARPER, et al.,

Respondents.

Case No. 6:24-cv-00841

MOTION FOR TEMPORARY RESTRAINING ORDER

PLEASE TAKE NOTICE that as soon as counsel may be heard, Petitioner, through undersigned counsel, will move the Court for entry of a Temporary Restraining Order (“TRO”) in the form attached and asking that this matter be set down for a hearing to convert those temporary restraints into a Preliminary Injunction pursuant to Fed. R. Civ. P. 65. In support of the motion, Petitioner submits the accompanying Memorandum of Law in Support of Temporary Restraining Order, the concurrently filed Complaint and Petition for a Writ of Habeas Corpus, and attached papers or exhibits.

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant this Motion for Temporary Restraining Order and Stay of Removal, and order Respondents to immediately release Petitioner Mr. Imran from immigration detention;
2. Enter the Proposed Order Granting Petitioner’s Motion for Temporary Restraining Order;
and
3. Grant such other and further relief as justice may require.

[Signature block on next page]

Dated: June 16, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June of 2025, I electronically filed the foregoing Motion for Temporary Restraining Order and Stay of Removal with the Clerk of the Court using the CM/ECF system, and served a copy of such filing via certified mail upon:

Alexander C. Van Hook
Acting United States Attorney
Western District of Louisiana
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/s/ Frank J. Catalano
Frank J. Catalano

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MUHAMMAD IMRAN,

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER**

The Petitioner, Muhammad Imran (“Mr. Imran”), respectfully moves this court for a temporary restraining order halting his imminent removal from the United States and ordering him released from custody. Mr. Imran is a longtime Illinois resident with no criminal history who has reported to U.S. Immigration and Customs Enforcement (“ICE”) without incident for years. He is married and has one U.S. citizen child as well as two children who are recipients of Deferred Action for Childhood Arrivals (“DACA”). Mr. Imran, originally from Punjab, Pakistan, has a pending motion to reopen his removal proceedings based on his fear of return to his native Pakistan, where persecution in Punjab has grown increasingly violent. ICE’s abrupt arrest and potentially imminent transfer of Mr. Imran to Pakistan violates rights vested in him by the Constitution, treaties, statutes, regulations, and policies.

On June 4, 2025, Mr. Imran was arrested during a routine check-in by Immigration and Customs Enforcement (“ICE”) Officers from the Chicago Field Office. Mr. Imran was transferred to the Winn Correctional Center in Winnfield, Louisiana, where he is currently being held. Since his detention on June 4, 2025, Mr. Imran has been deprived from the life-saving

medications he needs to treat his diabetes and kidney disease among other pressing medical ailments.

In light of this dire situation, the Petitioner seeks a temporary restraining order. The threat of Mr. Imran's immediate deportation plainly poses a risk of irreparable harm, and the Petitioner can demonstrate a sufficient likelihood of succeeding on his claim that deporting him would violate the regulations that expressly authorize his request for his proceedings to be reopened, would violate related federal statutes and treaties, and would violate the Fourth and Fifth Amendments to the U.S. Constitution. Finally, considerations of public interest and a balancing of the equities favor the Petitioner. For all these reasons, he respectfully urges the Court to grant his motion for a temporary restraining order until this Court can fully address the merits of this case.

FACTS ABOUT PETITIONER

The Petitioner, Muhammad Imran, is a 61-year-old native and citizen of Pakistan. He entered the United States on May 1, 1996 on an B2 visitor visa. He has remained continuously present in the United States ever since his 1996 arrival. Mr. Imran has been married to his wife, Samina Imran, since April 4, 1989. They have three children together. Their first child, Sumia Imran, was born on [REDACTED] in Pakistan, and is currently a DACA recipient. Their second child, Hamra Imran, was born on [REDACTED] in Pakistan, and is currently a DACA recipient. Their youngest child, Hifza Imran, was born on [REDACTED] in the United States. Mr. Imran and his wife reside in Niles, Illinois.

Around 2005, Mr. Imran filed an Application for Asylum and for Withholding of Removal, with U.S. Citizenship and Immigration Services ("USCIS"), in which he asserted a

fear of persecution in Pakistan on account of his race, religion, and membership in a particular social group; as well as seeking protection under the Convention Against Torture.

On April 3, 2006, the Immigration Judge in Chicago, Illinois denied Mr. Imran's application for asylum. Mr. Imran filed an appeal with the Board of Immigration Appeals ("BIA"). On January 31, 2008, the BIA dismissed the appeal and ordered Mr. Imran removed from the United States. On July 7, 2020, Mr. Imran filed a motion to reopen his case. However, the BIA denied his motion to reopen on August 31, 2020.

In 2013, Mr. Imran was placed under an ICE order of supervision. Since then, Mr. Imran has been consistently complying with all ICE reporting requirements, including multiple check-ins each year. On June 4, 2025, Mr. Imran was detained without explanation at his regular ICE check-in at the Chicago Field Office. He was transferred to the Winn Correctional Center in Winnfield, Louisiana. On June 6, 2025, Mr. Imran submitted a motion to reopen with the BIA.

ARGUMENT

I. THE COURT HAS JURISDICTION TO TEMPORARILY STAY MR. IMRAN'S REMOVAL

As a threshold matter, the court has jurisdiction over the Petitioner's claims, and this motion for a Temporary Restraining Order enjoining Mr. Imran's removal under Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2201 (Declaratory Judgment Act); and 28 U.S.C. § 2241 (habeas corpus). Although the Government may argue that the INA's jurisdiction-stripping provisions bar judicial review of the claims raised in the accompanying habeas petition, these provisions do not, in fact, bar review for the reasons below. More importantly, as a preliminary matter, there can be no question that the Court has jurisdiction to determine its own jurisdiction. *United States v. United States Mine Workers of America*, 330 U.S. 258 (1947). In light of the

imminent nature of Mr. Imran's removal, the Court should accept jurisdiction to determine its own jurisdiction, and to allow time for a more thorough analysis of these issues.

In numerous analogous cases, district courts have determined that they have statutory jurisdiction over claims seeking to enjoin removal in order to effectuate statutory, regulatory, and Due Process rights. *See Wanrong Lin v. Nielsen*, 377 F. Supp. 3d 556 (D. Md. 2019); *Pangemanan v. Tsoukaris*, 18-cv-1510 (D.N.J. Feb. 2, 2018) (enjoining the removal of a group of Indonesian nationals with final orders of removal while their case was adjudicated); *Ramsundar v. Sessions*, 18-cv-6430 (W.D.N.Y. June 20, 2018) (enjoining removal of petitioner for two months while her motion to reopen her asylum case is pending at the Board of Immigration Appeals); *see also Ragbir v. United States*, No. 2:17-cv-1256-KM, 2018 WL 1446407, at *11 (D.N.J. Mar. 23, 2018) (granting preliminary injunction enjoining removal for pendency of petitioner's coram nobis case). As these decisions recognize, the INA's jurisdiction-stripping provisions cannot be read so broadly as to foreclose all district court review of non-discretionary legal claims.

Numerous courts have also determined that a finding that the court does not have habeas jurisdiction would violate the Suspension Clause. *See, e.g., Bowrin v. U.S. I.N.S.*, 194 F.3d 483 (4th Cir. 1999); *Osorio-Martinez v. Attorney Gen. United States of Am.*, No. 17-2159, 2018 WL 3015041, at *17 (3d Cir. June 18, 2018) (holding that 8 U.S.C. § 1252(e) "violates the Suspension Clause as applied to Petitioners" because "the INA does not provide 'adequate substitute procedures'"); *Devitri v. Cronen*, 290 F. Supp. 3d 86 (D. Mass. 2017) ("If the jurisdictional bar in 8 U.S.C. § 1252(g) prevented the Court from giving Petitioners an opportunity to raise their claims through fair and effective administrative procedures, the statute would violate the Suspension Clause as applied."); *HiIbrahim v. Acosta*, No. 17-cv-24574, 2018

WL 582520, at *6 (S.D. Fla. Jan. 26, 2018) (“[Section 1252(g)] violates the Suspension Clause as applied if it deprives Petitioners of a meaningful opportunity to exercise their statutory right”); *see also Chhoeun v. Marin*, -- F. Supp. 3d --, 17-cv-01898, 2018 WL 566821, at *9 (C.D. Cal. Jan. 25, 2018) (finding jurisdiction to stay removal of Cambodian citizens with outstanding orders of removal while they filed motion to reopen because they did not seek review of removal orders or “any substantive benefits” but rather adequate due process in their underlying proceeding), *appeal docketed*, 18-55389 (9th Cir. March 26, 2018).

If Mr. Imran is removed, he will be unable to pursue his rights under the statute. He will not be able to pursue his motion to reopen from where he would most likely be persecuted. Mr. Imran’s case mirrors that of the petitioner in *Compere v. Nielsen*, 358 F. Supp. 3d 170 (D.H.N. 2019) (granting habeas petitioner a stay of removal “because removing him to Haiti before he can litigate his motion to reopen would violate his rights under federal law”). Mr. Compere argued that he would be unable to adjudicate his motion to reopen from Haiti, because he faced detention and possible death upon his return, based on his uncle’s status as an opposition political figure and his status as a “criminal deportee.” *Id.* at 174. The district court agreed with Mr. Compere that he would be unable to litigate his motion from Haiti and that removal would violate his rights. The court then granted him a stay of removal for the pendency of the resolution of his motion to reopen at the BIA and any subsequent appeals. *Id.* at 183. Like the petitioner in *Compere*, Mr. Imran has a “statutory right to file a motion to reopen with the BIA and he has an associated right to seek judicial review in the court of appeals from a decision by the BIA denying such a motion.” *Id.* at 181. Similarly, in *Sihaan v Madrigal et. al.* No. 8:20-cv-02618-PWG (S. D. Md. October 5, 2020), the court stated that removing a noncitizen to his home country while his motion to reopen was still pending would cause their “victory [to] be entirely

pyrrhic, for he already would be in [his home country], to where he should not have been removed in the first place if he qualified for CAT protection, and certainly unable to enjoy any benefit of asylum status in the distant United States.” *Id.* at 10. The court further explained that although the noncitizen could have “an adequate substitute for habeas corpus because he may continue to pursue his motion to reopen even if he is removed [. . .] the facts of his particular circumstances belie his ability to do so, as his contention is that he will face persecution, and possibly death or serious injury [. . .], which significantly undermines as a practical matter his ability to effectively prosecute his claims pending before the BIA.” *Id.* at 15. Other courts have agreed that threats of physical injury within a country of removal deteriorate the ability to effectively prosecute claims before the BIA, and any subsequent appeal, which makes 8 U.S.C. §1229(c)(7)(C)(ii) and §1252(b)(9) inadequate substitutes for habeas relief. *See e.g., Joshua M.*, 439 F. Supp. 3d at 677-76; *Diaz-Amezuca v. Barr*, 402 F. Supp. 3d 963, 967 (W.D. Wash. 2019) (holding §1252(g) violated the Suspension Clause where petitioner alleged he would be a target of gang violence upon removal to Mexico). As such, it is imperative Mr. Imran remains in the United States in order to pursue his rights under the statute.

Because the INA does not bar review of Mr. Imran’s claims, or in the alternative because if they do those provisions violate the Suspension Clause as applied, this court has jurisdiction over their case.

II. PETITIONER IS LIKELY TO SUCCEED ON HIS CLAIMS.

A. Petitioner Is Likely to Succeed on the Merits of his Claims because Statutes, Regulations, and the Constitution Bar Mr. Imran’s Immediate Removal to Pakistan.

Mr. Imran is likely to succeed on the merits of his claim that deportation without an opportunity to pursue his motion to reopen through the process set forth by statute and

regulations would violate the Immigration and Nationality Act and applicable regulations; the Administrative Procedures Act; and the Due Process Clause of the Fifth Amendment.

Under what is known as the “*Accardi doctrine*” and the Due Process Clause, agencies are required to follow their own rules or procedures when those rules or procedures affect people’s fundamental rights. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) (“An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.”); *Yanez-Marquez v. Lynch*, 789 F.3d 434, 474 (4th Cir. 2015) (“We have recognized that “an agency’s failure to afford an individual procedural safeguards required under its own regulations may result in the invalidation of the ultimate administrative determination.”); *United States v. Morgan*, 193 F.3d 252, 266 (4th Cir. 1999) (“We have recognized that an agency’s failure to afford an individual procedural safeguards required under its own regulations may result in the invalidation of the ultimate administrative determination”).

Mr. Imran’s motion to reopen is pending with the Board of Immigration Appeals. His removal to a country where his life is in serious danger is imminent. On paper, Mr. Imran is exercising his statutory right to file a motion to reopen before the BIA. INA § 240(c)(7)(C)(ii) (permitting a person to file a motion to reopen at any time to seek asylum if the basis is changed country conditions arising in the country of nationality). What is happening in practice, however, is another story. While Mr. Imran’s motion remains under consideration, the Government appears to be deporting him before the BIA actually decides his motion. Mr. Imran has a very strong *prima facie* case for appeal, should his motion to reopen be denied. Mr. Imran was—and remains—statutorily eligible for relief.

Finally, the Petitioner is likely to prevail in his claim that the defendants' actions and policy violate the Administrative Procedure Act ("APA"). The APA requires that agency action not be arbitrary and capricious, and that agencies not "depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Nor does the APA permit regulations promulgated by notice and comment be ignored, altered or repealed without a further notice and comment procedure. *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

ICE has acted to, arbitrarily and in violation of the law, deny Mr. Imran his right to litigate his motion to reopen. A judicial stay of removal is warranted to protect against this arbitrary Government action. *Cf. Calderon v. Sessions*, 330 F. Supp. 3d 944, 958 (S.D.N.Y. 2018) ("Here, by detaining and attempting to execute Petitioner's order of removal, Respondents have attempted to strip the Petitioner's right to engage in an immigration process made available to him.").

B. Mr. Imran Is Likely to Prevail in His Claim that His Detention Violates Applicable Regulations and the Due Process Clause.

Mr. Imran is likely to prevail in his claim that his detention violates regulations and due process in that he presents neither of the two permissible justifications for immigration detention: risk of flight or danger to the community. Moreover, DHS has failed to follow regulations that are designed to protect against unconstitutional deprivations of liberty.

1. Because Mr. Imran Presents Neither a Risk of Flight Nor a Danger to the Community, His Detention Violates Due Process.

Due process permits civil detention "in certain special and narrow nonpunitive circumstances ... where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

(quotations omitted). Such special justification exists only where a restraint on liberty bears a “reasonable relation” to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*, 533 U.S. at 690. In the immigration context, those purposes are “ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

Mr. Imran plainly presents neither a risk of flight nor a danger to the community. Since 2013, Mr. Imran has complied with all ICE reporting requirements. He has every incentive to continue following the reporting requirements. Moreover, ICE has not suggested, nor would it have any basis to suggest, that he poses a danger to the community.

2. Due Process Requires DHS to Adhere to Its Custody Regulations.

As noted *supra*, it is well-settled that “rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency.” *Leslie v. Attorney Gen. of U.S.*, 611 F.3d 171, 175 (3d Cir. 2010) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-67 (1954)). The custody regulations governing detention of individuals with final orders of removal, like Mr. Imran, are exactly such rules. *See Detention of Aliens Ordered Removed*, 65 F.R. 80281-01, at 80283 (2000) (explaining that § 241.4 “has the procedural mechanisms that . . . courts have sustained against due process challenges”). The agency has stated that the regulations “contemplate[d] individualized determinations where each case must be reviewed on its particular facts and circumstances,” *id.* at 80284, and acknowledged a Third Circuit decision holding that due process “requires an opportunity for an evaluation of the individual’s current threat to the community and his risk of flight.” *Id.* (citing *Chi Thon Ngo v. LIV.S.*, 192 F.3d 390, 398-99 (3d Cir. 1999) (INS directors’ reliance on widely applicable characteristics to deny release was “not satisfactory and d[id] not afford due process[.]”). Thus,

the custody regulations are not mere “housekeeping” procedures but rather binding requirements that “protect the fundamental Fifth Amendment right to notice and an opportunity to be heard.”

Jimenez v. Cronen, No. 18-cv-10225 (MLW), 2018 WL 2899733, at *9 (D. Mass. June 11, 2018) (finding that where DHS fails to follow the regulations, “the court may order ICE to conduct a custody review, or conduct the review itself and, if warranted, order the alien released”).

Yet DHS has failed to follow those regulations here. When the government revokes the release of a noncitizen subject to a final order of removal, applicable regulations provide that “the alien will be notified of the reasons for the revocation of his or her release ...[and] will be afforded an initial informal interview promptly after his or her return to [DHS] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. §241.4(1)(1). Mr. Imran never received a notification stating DHS's reasons for suddenly detaining him, nor has he had an interview or other opportunity to respond to them or explain why his detention is unnecessary. What is more, Respondents were required under 8 C.F.R. § 292.5(a) to provide notice to Mr. Imran’s counsel of the reasons for the revocation of his release. They similarly failed to do so. That failure resulted in an unnecessary delay in the filing of Mr. Imran’s habeas petition.

Perhaps most troubling of all is that the government simply has no justification for detaining Mr. Imran. The custody regulations provide a list of potential considerations to inform the discretionary decision to imprison a previously released individual. *See* 8 C.F.R. § 241.4(1)(3). Imminent removal is not a sufficient reason to re-detain a person. *See* 8 C.F.R. § 241.4(1)(2) (listing bases for revocation of release); *see also Alexander v. Attorney Gen*, U.S., 495 F. App’x 274, 277 (3d Cir. 2012) (holding that even where removal is imminent, detainee may be able “to prevail on an alternative ground predicated on regulatory

noncompliance”). Indeed, the regulations explicitly provide for release under an order of supervision if DHS determines “that the alien would not pose a danger to the public or a risk of flight, without regard to the likelihood of the alien’s removal in the reasonably foreseeable future,” 8 C.F.R. § 241.13(b)(1) (emphasis added).

Permitting revocation and re-detention on the sole basis of foreseeable removal, without an individualized finding that an individual now poses a flight risk or danger, moreover, would violate due process. *See Zadvydas*, 533 U.S. at 690 (holding permissible regulatory goals of immigration detention are “ensuring the appearance of aliens at future immigration proceedings” and “preventing danger to the community”); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232 (3d Cir. 2011) (explaining that Congress may “pass a law authorizing an alien's initial detention” but only “so long as those implementing the statute provide individualized procedures through which an alien might contest the basis of his detention.”); *Chi Thon Ngo v. INS.*, 192 F.3d 390, 399 (3d. Cir. 1999) (holding that to comport with due process, custody review must entail “individualized analysis of the alien's . . . present danger to society and willingness to comply with the removal order”).¹ Accordingly, Mr. Imran is likely to prevail on his claims challenging his ongoing detention.

III. PETITIONER HAS STANDING AND WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION.

“To establish standing under Article III of the Constitution, a plaintiff must 'allege (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct and

¹ The INA imposes 90 days of mandatory detention once an order of removal becomes final, *see* 8 U.S.C. § 1231(a)(1), but past that period detention is discretionary. *See* 8 U.S.C. § 1231(a)(6) (providing that individuals “may be detained beyond the removal period” if “determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal”); *see also, e.g., Guerra v. Shanahan*, 831 F.3d 59, 62 (2d Cir. 2016) (explaining that “[a]fter the removal period has expired, detention is discretionary”). Mr. Siahaan was detained many years after the removal period expired, and thus his detention is discretionary.

that is (3) likely to be redressed by the requested relief.” *Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992)).

While standing is necessary, “the Supreme Court has made it clear that the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.” *Id.* (internal quotation marks omitted).

Mr. Imran will be irreparably harmed by the denial of an injunction barring Mr. Imran’s immediate, forced removal from the U.S. and ordering his release during the pendency of his motion to reopen. Removal “visits a great hardship on the individual and deprives him of the right to stay and live and work in the land of freedom. That deportation is a penalty - at times a most serious one - cannot be doubted. Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.” *Rose v. Woolwine*, 344 F.2d 993, 995 (4th Cir. 1965) (quoting *Bridges v. Wixon*, 326 U.S. 135, 154 (1945)). *See also Padilla v. Kentucky*, 559 U.S. 356 (2010) (“[w]e have long recognized that deportation is a particularly severe ‘penalty.’”) As another District Court recently observed, failure to enjoin the removal of a longtime U.S. resident with a final order of removal during the pendency of his case would “separate[] [him] from his wife, daughter, family, and community.” *Ragbir v. United States*, No. 2:17-cv-1256-KM, 2018 WL 1446407, at *18 (D.N.J. Mar. 23, 2018). In this case, removal will separate Mr. Imran from his family for years.

CONCLUSION

For the foregoing reasons, the motion for a temporary restraining order should be granted.

Dated: June 16, 2025

Respectfully Submitted,

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[PROPOSED] TEMPORARY RESTRAINING ORDER

Pursuant to Federal Rule of Civil Procedure 65, the Court orders that:

- a) Respondents shall not transfer the Petitioner, Mr. Muhammad Imran, to Pakistan.
- b) Respondents shall immediately return Mr. Imran to Illinois;
- c) Respondents shall not remove Mr. Imran from the United States until he has received a decision from the Board of Immigration Appeals on his motion to reopen his immigration proceedings and has obtained judicial review that decision if necessary;
- d) Respondents shall immediately release Mr. Imran from custody unless Respondents demonstrate to this Court that he presents a danger to the community or a flight risk.

Dated: _____

UNITED STATES DISTRICT JUDGE