

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

Vraj Dilipbhai PATEL (A )

Petitioner,

v.

Case No. 3:25-cv-00373-RGJ

JEFF TINDALL, Jailer, Oldham County
Detention Center;

SAMUEL OLSON, Field Office Director,
Chicago Field Office, Immigration and
Customs Enforcement;

KRISTI NOEM, Secretary of the U.S. Department
of Homeland Security; and

PAMELA BONDI, Attorney General of the
United States,
Respondents.

**REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

This Court should grant Petitioner's motion for a temporary restraining order and preliminary injunction because this Court has jurisdiction over Petitioner's writ of habeas corpus petition and claims, and the four factors considered for a temporary restraining order weigh in favor of Petitioner.

I. Jurisdiction

This court has subject matter jurisdiction over Petitioner's claim. This action arises under the Suspension Clause of the U.S. Constitution (28 U.S.C. § 2241, art. I, § 9, cl. 2) and 28 U.S.C. section 1331. This Court's jurisdiction derives from 8 U.S.C. section 1252(a)(2)(A), which states that judicial review of an expedited removal order is limited to certain inquiries. Specifically, 8 U.S.C. section 1252(e)(2) only permits the Court's review in a habeas action of whether the Petitioner was ordered removed under the expedited removal statute. 8 U.S.C. section 1252(e)(5)

governs the scope of inquiry on habeas to whether the U.S. Department of Homeland Security (“DHS”), in fact, issued a valid expedited removal order to Petitioner.

Historically, a habeas petition “is at its core a remedy for unlawful executive detention”. *Munaf v. Geren*, 553 U.S. 674, 693 (2008). The Supreme Court in *Demore v. Kim* specifically found that 8 U.S.C. section 1226(e) did not explicitly bar habeas review of constitutional claims. 538 U.S. 510, 517 (2003). Further, the Sixth Circuit recognizes a district court’s jurisdiction over detention-based claims, which are distinct from removal-based claims. *Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018).

Respondents claim 8 U.S.C. section 1252(g) precludes this Courts jurisdiction in the present matter. However, section 1252(g) only bars federal-court jurisdiction to review the Attorney General’s decision to commence proceedings, adjudicate cases, or execute removal orders. *Id.* Petitioner is not asking for this Court to review the Attorney General’s decision to commence proceedings against him, as he was already in section 1229a immigration proceedings. Likewise, he is not seeking review of his asylum claim. Finally, Petitioner is not requesting review of the execution of his unlawfully issued expedited removal order. Petitioner seeks this Court’s review of whether DHS lawfully issued him a valid expedited removal order, whether he was in fact ordered removed under the expedited removal statute, and whether his ongoing detention violates his due process interests and rights. Review of these issues by this Court are permissible under 8 U.S.C. section 1252(e)(4). Thus, this Court has subject matter jurisdiction over Petitioner’s claim.

II. A temporary restraining order and injunctive relief are appropriate remedies.

Injunctive relief for detention-based claims is available in individual cases. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 481-82 (1999). Despite U.S. Immigration and

Customs Enforcement's lack of authority to issue Petitioner an expedited removal order and unlawfully detain him, Petitioner is at risk of being moved to a different state and a different detention center where he would have to restart his removal proceedings before a new immigration judge and court. His transfer to a different facility also puts his pending habeas petition at risk. *See Fadayiro v. Ashcroft*, No. Civ.A. 05CV034KKC, 2005 WL 1364560 *2 (E.D. KY 2005) (dismissing petitioner's claim after he was transferred to a new jurisdiction). A temporary restraining order and injunctive relief ensures Petitioner is not prejudiced further.

A. Petitioner has a strong likelihood of success on the merits.

The government made the decision to place Petitioner in section 1229a proceedings after his arrival to the United States. 8 U.S.C. § 1229a; Dkt. 19, PX Exh. 1. When a noncitizen is placed in section 1229a proceedings, this proceeding becomes the "sole and exclusive procedure for determining whether an alien may be...removed from the United States." *Martinez v. Larose*, 968 F.3d 555, 561 (6th Cir. 2020) (citing 8 U.S.C. § 1229a(a)(3)). An immigration judge has jurisdiction over section 1229a immigration proceedings. 8 U.S.C. § 1229a(a)(3); 8 C.F.R. § 1003.14(a)-(b).

The Supreme Court and the Sixth Circuit consistently recognize the due process protections granted to non-citizens in deportation proceedings by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("Due Process Clause applies to all 'persons' within the United States, including aliens"); *Landon v. Plasencia*, 459 U.S. 21 (1982) (finding respondent was entitled to due process in her exclusion hearing); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (holding that the Fourteenth Amendment of the constitution was not confined to the protection of U.S. citizens only); *Wong Wing v. U.S.*, 163 U.S. 228 (1896) (affirming that the

Fifth and Sixth Amendments are guaranteed to all persons within the territory of the United States).

Petitioner was denied due process during his section 1229a proceedings, which resulted in his unlawful detention. After his entry and initial release into the U.S., Petitioner complied with all requirements for seeking asylum. He sought immigration counsel, filed his asylum application on time, submitted written pleadings to the immigration court, and duly attended his first and only ICE check-in. Dkt. 15, PX Exh. 1. Notably, Petitioner's case was ready to be set for a final individual hearing on the merits of his asylum case. On June 9, 2025, Respondents detained Petitioner at his first and only ICE check-in. Dkt. 22, Exh. 1. Upon his detention, Respondents issued Petitioner an expedited removal order despite Petitioner's section 1229a proceedings still being active and under the jurisdiction of an immigration judge. Dkt. 22, Exh. 2. Approximately 10 days after Respondents issued an expedited removal order against Petitioner, on June 18, 2025, an immigration judge granted DHS's opposed motion to dismiss Petitioner's proceedings. Dkt. 15, PX Exh. 2. The immigration judge then held a bond hearing and found Petitioner to be a flight risk because the immigration judge had dismissed Petitioner's pending asylum case. Dkt. 19, PX Exh. 5.

Due to the severity of the consequences of immigration proceedings and similarity to criminal proceedings, non-citizens in section 1229a proceedings are provided essential safeguards such as the right to have their case heard before an impartial immigration judge. 8 U.S.C. § 1229a. The legal maneuvers of dismissing Petitioner's asylum case based on changed circumstances that were not articulated by the immigration judge in his order and using the dismissal of Petitioner's asylum case to deny him bond violate his rights to a fair and impartial

hearing. ICE's issuance of an expedited removal order while Petitioner was in active section 1229a proceedings and detaining him violated both his due process rights and liberty interests.

Respondents rely on *Dep't of Homeland Sec. v. Thuraissigiam*, to support their claim that Petitioner's detention and the government's actions are lawful under 8 U.S.C. section 1225. 591 U.S. 103 (2020). However, *Thuraissigiam* dealt with a non-citizen who was seeking review of his credible fear determination instead of seeking release from unlawful detention. *Id.* at 114-15. Here, Petitioner is not asking this Court to make any judgment on his fear of returning to India. Rather he seeks release from his current unlawful detention and a resolution on the unlawful issuance of an expedited removal against him, as he was already released from detention after his initial entry into the United States and accorded the right to pursue asylum through 1229a proceedings.

Considering the constitutional defects in Petitioner's case, he has a strong likelihood of success on the merits.

B. Petitioner will suffer irreparable harm.

Petitioner will suffer irreparable, tangible harm if a temporary restraining order and injunctive relief is not granted in his case. While the courts acknowledge non-citizens seeking initial entry are not afforded the same due process rights as non-citizens who have entered the U.S. lawfully, the Supreme Court has recognized the important role the Fifth Amendment holds in immigration proceedings to "prevent abuse of [the government's] extraordinary power." *Kwock Jan Fat v. White*, 253 U.S. 454, 464 (1920). It is well established that an alleged constitutional infringement will constitute irreparable harm. *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 710 (6th Cir. 2002); *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1998) (holding that the "unnecessary deprivation of liberty clearly constitutes irreparable harm").

Courts widely recognize that immigration proceedings have the same or greater stake than in criminal or civil actions. This is due to the possible outcome of a non-citizen being deported, which causes the non-citizen great hardship, especially if they are seeking asylum. *Detroit Free Press*, 303 F.3d at 696.

Petitioner's ongoing detention violates the Constitution simply because he was detained while still in section 1229a proceedings where the immigration judge had exclusive jurisdiction over the case, making it unlawful for ICE to issue Petitioner an expedited removal order. 8 U.S.C. § 1229a(a)(3); *see Martinez v. Larose*, 968 F.3d 555, 561 (6th Cir. 2020) (recognizing section 1229a proceedings as distinct and "exclusive"). Petitioner has been fighting his removal hearing in good faith, and even if found removable, should be eligible for relief from removal. Notably, Petitioner was not held in custody for more than a year during the pendency of his immigration proceedings. He complied with all requirements, including appearing for his first and only ICE check-in when he was detained on June 9, 2025, as well as filing a timely application for asylum relief in immigration court. Dkt. 15, PX Exh. 1. Now detained, he cannot work and instead has become a financial burden on the State of Kentucky and federal government. The harm suffered by unlawful detention without adequate due process is particularly severe for Petitioner.

C. An injunction will not cause substantial harm to others.

The government will not suffer irreparable harm if the injunction is entered. According to the National Immigration Forum, in Fiscal Year 2018, it cost, on average, \$208 per day to detain a single non-citizen.¹ This cost taxpayers more than \$3 billion in Fiscal Year 2018.²

¹ <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>

² *Id.*

Petitioner has no criminal history and has an offer of employment with Cowboys 2000 Inc. DBA Plano Country Store as a Cashier. Dkt. 24, PX Exh. 1. Since he intends to continue pursuing his valid asylum claim, he is not a flight risk. The National Immigration Forum also indicates that alternatives to detention (“ATD”) programs such as ankle monitors and case management, cost as little as 70 cents to \$17 per day per person and an average contract costs between \$5 and \$6 per day.³ A 2014 U.S. Government Accountability Office report shows that 95% of immigrants who are enrolled in full service ATD programs appear for their final immigration hearings.⁴ Given the high price of detaining an individual non-citizen, it is in the government’s interest to release Petitioner on an ATD program while he awaits the completion of his immigration proceedings.

D. Public interest favors the issuance of the injunction.

The injunction sought is in the public interest. The public has an interest in upholding constitutional rights. *G & V Lounge Inc. v. Mich. Liquor Control Comm.*, 23 F.3d 1071, 1079 (6th Cir. 1994); *Malam v. Adducci*, 452 F. Supp. 3d 643, (E.D. Mich. 2020) (finding that due process outweighs the “significant” public interest in enforcement of the country’s immigration laws); see *Phelps-Roper v. Nixon*, 545 F.3d 685,690 (8th Cir. 2008) (“[I]t is always in the public interest to protect constitutional rights.”).

The public has an interest in accurate determinations in all legal proceedings, including in the decision of whether to detain individuals during their immigration cases, and in ensuring that the government only expends its resources to detain individuals where it is necessary to prevent danger or flight risk. Thus, this factor weighs in favor of Petitioner.

³ *Id.*

⁴ <https://www.gao.gov/assets/gao-15-26.pdf>

III. Conclusion

The Court has subject matter jurisdiction over Petitioner's writ of habeas corpus petition and claims, and should issue a temporary restraining order and preliminary injunction because he has a strong likelihood of success on the merits of his claims, the irreparable harm Petitioner will face outweighs any harm the government will experience, and the public interest in upholding constitutional rights favors the issuance of this relief.

Dated: July 8, 2025

Respectfully Submitted,

Vraj Dilipbhai PATEL

By: /s/ Maya A. Flores

One of his attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2025, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Respondents.

/s/ Maya A. Flores
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