

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IMRAN KHAN,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

Respondents.

Civil Action No:  
25-14246 (JKS)

**PETITIONER'S RESPONSE TO RESPONDENTS ANSWER TO FIRST AMENDED  
VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

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Torrence v. Lewis, 60 F.4th 209, 213 (4th Cir. 2023)

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Aditya W. H. v. Trump, 782 F. Supp. 3d 691, 703 (D. Minn. 2025)

**STATUTE**

28 U.S.C. § 2243

28 U.S.C. § 2241

U.S. Const., Art. I, § 9, cl. 2

8 § 1231(a)(6)

28 U.S.C. § 1651

8 U.S.C.S. §§ 1252

### **PRELIMINARY STATEMENT**

Imran Khan (“Mr. Khan”), a national of Bangladesh, is subject to a final order of removal currently pending review by the Board of Immigration Appeals (“BIA”). The above captioned Respondents argue Mr. Khan’s request for release and habeas should be denied based upon two reasons. The first being that the Petitioner’s removability was foreseeable, and second that this Court lacks jurisdiction to stay Mr. Khan’s removal proceedings. Mr. Khan opposes the allegations set forth by the Respondents, and argues he is neither removable in the foreseeable future, that this Court has jurisdiction over this matter and has the right to stay Mr. Khan’s removal pending this proceeding.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Mr. Khan has resided in the United States since his most recent entry in 1999 under F-1 non-immigrant student visa status (“F-1”). On or around June 12, 2003, Mr. Khan was served with a Notice to Appear which charged him as removable under 8 U.S.C. § 1227(a)(1)(C)(i), and the Immigration and Nationality Act (“INA”) § 237(a)(1)(C)(i), based up on allegations of failing to comply with the terms and conditions of his F-1 status. Mr. Khan later filed his form I-589, Application for Asylum, Withholding of Removal and Relief under the Convention against Torture (“Asylum case”). On or about September 24, 2004, an Immigration Judge denied Mr. Khan’s Asylum case.

Mr. Khan met his wife, Nafisa Wali (“Ms. Wali” or “spouse”), and the two married in 1997. Mr. Khan and Mr. Wali later had a son, [REDACTED] born on [REDACTED] and daughter, [REDACTED] born on [REDACTED] both of whom were born in the United States. Notably, Mr. Khan is a vital member of not only his family, but also his community and place of work. Mr. Khan is the sole financial provider for Ms. Wali and his two minor children,

one of which is severely autistic and non-verbal. Mr. Khan has paid all taxes on his lawfully issued Social Security Number, and is deeply cared for by much of his community. *See Exhibit “A”*.

On September 21, 2004, the Respondent was ordered removable by the Newark Executive Office for Immigration Review (“Immigration Court”). On December 12, 2005, the BIA affirmed the Immigration Court’s order denying Mr. Khan’s Asylum case. On or about February 16, 2007, the Third Circuit affirmed the BIA’S decision denying Mr. Khan’s Asylum case. Mr. Khan was previously detained during two different periods, the first being between the periods of September 25, 2008 and January 27, 2009, and was released subject to an order of supervision under ICE. On or about July 3, 2025, Mr. Khan was again detained during his routine check-in with Immigration and Customs Enforcement (“ICE”), and remanded to detention in the Delaney Hall Facility located in New Jersey (“New Jersey Facility”). On or about July 18, 2025, Mr. Khan’s immigration attorney filed an Emergency Motion to Reopen and Emergency Stay of Removal with the BIA (“Emergency Motion”). The U.S. Department of Homeland Security opposed the aforementioned Motion, which remains pending before the BIA to date.

On September 8, 2025, undersigned counsel brought forth this action on behalf of Mr. Khan seeking his release from detention during the pendency of this action. On or around September 5, 2025, Mr. Khan was then abruptly transferred from the Delaney Hall Facility to the Alexandria Staging Facility located in Louisiana (“Louisiana Facility”). On September 6, 2025 at around 1:00AM, our office filed an Emergency Order to Show Cause urgently requesting that Mr. Khan be transferred from the Louisiana Facility back to the New Jersey Facility, and that he remains in the New Jersey Facility and generally within the state of New Jersey during the

pendency of this matter. On or about September 6, 2025 at a time unknown to undersigned counsel, Mr. Khan was yet again abruptly transferred from his Louisiana Facility to a detention center in East Montana in El Paso, Texas (“Texas Facility”). Pursuant to a letter request to this Court, Mr. Khan was granted permission to file his First Amended Verified Petition for a Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief on September 8, 2025 (“amended petition”). On September 8, 2025, this Court signed the Petitioner’s Order to Show Cause. On September 12, 2025, the Respondent was moved to the Otero County Processing Center in Chaparral, New Mexico (“New Mexico Facility”), where he currently remains detained. On September 26, 2025, Respondents filed their Answer to Mr. Khan’s amended petition.

### **LEGAL STANDARD**

“A federal court may grant habeas relief only on the ground that the petitioner is in custody in violation of the Constitution or laws or treaties of the United States.” *Torrence v. Lewis*, 60 F.4th 209, 213 (4th Cir. 2023) (internal citations omitted). After receiving the petition and any response thereto, “[t]he court shall summarily hear and determine the facts and dispose of the matter as law and justice require.” 28 U.S.C. § 2243. “[T]he heart of habeas corpus,” the Supreme Court has noted, is to allow a detainee to “challeng[e] the fact or duration of his physical confinement,” and to “seek immediate release or a speedier release from that confinement.” See *Preiswer v. Rodriguez*, 411 U.S. 475, 498 (1973).

### **LEGAL ARGUMENT**

“[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States.” See *Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S. Ct. 2633 (2004) (plurality opinion) (citing U.S. Const., Art. I, § 9, cl. 2). Historically, the writ of habeas corpus

“has served as a means of reviewing the legality of Executive detention...” Kapoor v. Demarco, No. 16-CV-5834-FB, 2022 LX 77169 (E.D.N.Y. Sep. 20, 2022) (quoting INS v. St. Cyr, 533 U.S. 289, 301, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001)); see also Swain v. Pressley, 430 U.S. 372, 380, n. 13, 51 L. Ed. 2d 411, 97 S. Ct. 1224 (1977) (noting that “the traditional Great Writ was largely a remedy against executive detention”). It is the petitioner’s burden to prove illegal detention by a preponderance of evidence. See Aditya W. H. v. Trump, 782 F. Supp. 3d 691, 703 (D. Minn. 2025) (collecting cases).

**I. THIS COURT HAS JURISDICTION OVER THESE PROCEEDINGS AND FURTHER HAS THE AUTHORITY TO STAY MR. KHAN’S REMOVAL DURING THE PENDENCY OF THIS MATTER**

Respondents improperly attempt to strip this Court of its indisputable jurisdiction over this matter, and further strip this Court of its authority to stay Mr. Khan’s removal during the pendency of this case. Generally, Congress grants federal courts statutory authority to hear and review writs of habeas corpus “within their respective jurisdictions.” 28 U.S.C. § 2241. Subject to certain exceptions, the federal district courts are authorized to grant the writ of habeas corpus “within their respective jurisdictions.” 28 U.S.C. § 2241(a); see also 28 U.S.C. § 1651(a) (“The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”). Mr. Khan is not challenging his removal order in these proceedings, he is merely contending the legality of his detention. It was found in other habeas matters that 8 U.S.C.S. §§ 1252 “did not strip the district court of jurisdiction to consider...[a petitioner’s] habeas petition, as [the petitioner] was not directly challenging an order of removal.

**II. MR. KHAN’S REMOVABILITY IS NOT FORESEEABLE**

This Court should find that Mr. Khan's removability is not foreseeable. Mr. Khan was previously detained in 2008 for an approximately 4 month and 2-day duration, and this year, he was detained for an approximately 3 month and 19-day duration. From 2008 to date, the Respondents have failed to finalize the removal of Mr. Khan, and are evidently now attempting to expedite the process, seemingly in response to these proceedings, and without justifiable cause. Notwithstanding Mr. Khan's final order of removal, he does indeed have an appeal pending with the BIA, as well as an application to stay his removal, which, within the context of equitable justice, he is entitled to have reviewed and adjudicated prior to any action being taken in connection to his removal.

The Respondents make reference to the Supreme Court's interpretation of 8 U.S.C. § 1231(a)(6) in *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) which limits an immigrant's detention beyond the period which is "reasonably necessary to bring about the [immigrant's] removal from the United States." 533 U.S. at 689. The Court further explored what would constitute a "reasonably necessary" time frame of detention to secure an immigrant's removal, as there is no definitive statutory time frame set forth. In *Zadvydas*, and as referenced by the Respondents, a 6-month period, coupled with an immigrant's justifiable reasoning to believe that he or she is not significantly likely to face removal in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *Id.*

The Respondents highlight the Court's reference in *Zadvydas* noting that "an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* On the contrary, just as the Respondents believe that Mr. Khan may be detained for a duration longer than 6 months, he can very well be released prior to

this 6-month duration, and such should be the case based upon the Respondents failure to present compelling justification for Mr. Khan's prolonged detention.

As stated above, Mr. Khan has been detained during two different periods, the first being between the periods of September 25, 2008 and January 27, 2009, and was released subject to an order of supervision under ICE. On or about August 12, 2021, ICE received a travel document for Mr. Khan from the Bangladeshi Embassy. ICE Assistant Field Office Director Jose P. Ortez ("Mr. Ortez") states in his declaration that "with assistance of HQ RIO, ICE-ERO has made continuing efforts to effectuate Petitioner's removal to the People's Republic of Bangladesh. *See* Doc #6, ¶12. Mr. Ortez further states that "ICE-ERO anticipates that a travel document is likely to be issued." *See* Doc #6, ¶ 13. In *Zadvydas*, and within the context of interpreting 8 § 1231(a)(6) and "as to avoid a serious constitutional threat," (*id*) the Court found that once removal is no longer reasonably foreseeable, "continued detention is no longer authorized by the statute." *Id.* 121 S. Ct. at 2503. It is evident that the Respondents have no basis to argue that Mr. Khan is indeed removable in the foreseeable future, as the declaration of Mr. Ortez only sets forth vague allegations regarding the "likely" issuance of a travel document which was only actively requested on September 1, 2025. Mr. Khan has been held in ongoing detention during two different periods, the first being from September 25, 2008 through January 27, 2009, and more recently from July 3, 2025 to date. The Respondents have had more than sufficient time to take the necessary definitive action to finalize the removal of Mr. Khan from the United States, but has not done so since he was first ordered removable in 2004.

Moreover, Mr. Khan has relief pending before the BIA, and with the assistance of his immigration attorney, Mr. Khan has potential to prevail in his request for relief from removal. Mr. Khan also has a pending application for a stay of deportation of removal which was filed October

3, 2025. See **Exhibit “B”**. As a result, not only have the Respondents failed to present justification for their position regarding Mr. Khan’s alleged foreseeable removable, Mr. Khan also has relief which he may be granted before the BIA which would alter the trajectory of his immigration court and generally his removal proceedings.

In the absence of a bright-line test, this Court should utilize its authority to determine that the Respondent’s removability is not foreseeable, and further that the Respondents have failed to present sufficient documentary evidence and testimony to support the allegation to the contrary.

### **III. MR. KHAN’S FAMILY URGENTLY REQUIRES HIS RELEASE**

Mr. Khan is the father of a severely autistic and non-verbal son, a minor daughter, and his wife, all of which require his full-time support emotionally, financially and physically. Since his detention, Mr. Khan’s son has suffered multiple medical and emotional breakdowns and his family as a whole has been unable to easily cope with his detention. Mr. Khan’s wife and children are struck with financial, emotional and physical trauma as a result of his prolonged detention, which the Respondents attempt to continue indefinitely. The release of Mr. Khan will not only remedy the unlawful detention he has been subjected to endure, but will further bring relief to his family and community.

### **CONCLUSION**

Within the context of equitable justice, this Court should find that the Respondent’s request to have his application for relief under habeas corpus granted, and for all other further relief that this court may deem just and proper.

Dated: October 22, 2025

Respectfully submitted,

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