

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MUHAMMAD IQBAL JABARKHEL,)
)
Petitioner,)

v.)

Case No. 4:25-cv-05939

MARTIN L. FRINK, in his official capacity as)
Warden of the Houston Contract Detention Facility;)
MATTHEW W. BAKER, in his official capacity as)
Acting Field Office Director, Houston Field Office,)
Enforcement and Removal Operations, U.S.)
Immigration & Customs Enforcement; TODD)
LYONS, in his official capacity as Acting Director)
U.S. Immigrations and Customs Enforcement;)
KRISTI NOEM, in her official capacity as U.S.)
Secretary of Homeland Security; PAMELA)
BONDI, in her official capacity as Attorney)
General of the U.S.; U.S. DEPARTMENT OF)
HOMELAND SECURITY; U.S. IMMIGRATION)
AND CUSTOMS ENFORCEMENT; and U.S.)
DEPARTMENT OF JUSTICE,)

Respondents.)

VERIFIED PETITION FOR WRIT OF HABEAS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. This case concerns the imminent and illegal deportation to a third country of Muhammad Iqbal Jabarkhel, who is a derivative on his wife’s pending Form I-589, Application for Asylum and Withholding of Removal (asylum application), in which she is seeking asylum and withholding from Afghanistan.
2. On or about December 10, 2025, ICE transferred Mr. Jabarkhel from the Joe Corley Processing Center to the Houston Contract Detention Facility, which is almost immediately adjacent to George Bush Intercontinental Airport. It therefore appears

that Respondents are staging Mr. Jabarkhel for removal. Undersigned counsel does not know the country to which Respondents intend to remove Mr. Jabarkhel.

However, Respondents' ability to remove people to Afghanistan is extremely limited, and Respondents recently signed purported agreements with countries including Eswatini, South Sudan, Rwanda, and Uganda under which those countries have agreed to accept people from other countries removed from the United States.

3. Under Respondents' policies, U.S. Immigration and Customs Enforcement may effectuate a third-country removal with as little as six hours' notice to the noncitizen—and without asking whether the noncitizen has a fear of persecution in that country. It therefore appears that Mr. Jabarkhel's removal to a country other than Afghanistan is imminent.
4. To counsel's knowledge, Respondents have not provided Mr. Jabarkhel with a credible fear interview to assess whether he has a credible fear of persecution in the third countries who have agreed to accept removals from the United States.
5. Respondents' imminent course of action violates the longstanding framework in the Immigration and Nationality Act ("INA") that governs removals to third countries. It also violates recent Supreme Court precedent making clear that a noncitizen must be given notice and a hearing before being removed to a third country.
6. Mr. Jabarkhel therefore respectfully asks this Court to stay his removal to any third country until and unless Respondents both provide him with adequate notice and a hearing and comply with the governing procedures in the INA.

CUSTODY

- Petitioner is in the physical custody of Respondents. Petitioner is detained at the Houston Contract Detention Facility, 15850 Export Plaza Dr, Houston, TX 77032. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

- This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.
- Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687.

VENUE

- Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (“the proper respondent to a habeas petition is ‘the person who has custody over the petitioner’”) (citing 28 U.S.C. § 2242) (cleaned up).

PARTIES

- Respondent Martin L. Frink is the Warden of the Houston Contract Detention Facility, where Petitioner is currently detained. He is a legal custodian of Petitioner and is named in his official capacity.
- Respondent Matthew W. Baker is the Acting Field Office Director, Houston Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement

(“ICE”), which has jurisdiction over Petitioner’s administrative immigration case and the Joe Corley Processing Center in Conroe, Texas. He is a legal custodian of Petitioner and is named in his official capacity.

13. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.
14. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.
15. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.
16. Respondent DHS is a cabinet-level agency of the federal government. DHS oversees the civil detention of noncitizens.
17. Respondent ICE is the subagency within DHS responsible for interior enforcement of the immigration laws and which oversees most civil immigration detention facilities.
18. Respondent DOJ is a cabinet-level agency of the federal government. DOJ oversees the immigration courts.

LEGAL BACKGROUND

The Statutory Scheme for Third-Country Removals and the Need for Notice

19. Respondents may not remove a noncitizen to any country where they are more likely than not to face persecution. 8 U.S.C. § 1231(b)(3)(A). Although there are narrow statutory exceptions to this rule, *see id.* § 1231(b)(3)(B), withholding of removal is mandatory relief, *e.g., Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013).
20. Respondents likewise may not remove a person to a country where it is more likely than not that they will be tortured. *E.g., Nasrallah v. Barr*, 590 U.S. 573, 575 (2020).

21. Although noncitizens who receive withholding of removal as to one country may be removed to another country, Congress created a nuanced, detailed scheme that Respondents must follow when seeking to effect a third-country removal. *See* 8 U.S.C. § 1231(b)(2).
22. This statutory scheme consists of “four consecutive ... commands.” *Jama v. ICE*, 543 U.S. 335, 341 (2005).
23. First, Respondents must attempt removal to a country designated by the noncitizen. 8 U.S.C. § 1231(b)(2)(A). Respondents “may disregard [that] designation” only if it is not made “promptly”; the designated country refuses to accept the noncitizen or does not provide a response to a request to accept the noncitizen within 30 days; or “the Attorney General decides that removing the [noncitizen] to the country is prejudicial to the United States.” *Id.* § 1231(b)(2)(C); *see also* Mem. Op. for the Deputy Att’y Gen, *Limitations on the Detention Authority of the Immigration & Naturalization Serv.* 76 n.11 (OLC Feb. 20, 2003).¹
24. “If a[noncitizen] is not removed to” the designated country, Respondents must remove them to “a country of which the [noncitizen] is a subject, national, or citizen.” 8 U.S.C. § 1231(b)(2)(D). The only exceptions are if the relevant country refuses the noncitizen or fails to timely respond. *Id.* § 1231(b)(2)(D)(i)-(ii).
25. If removal to neither the designated country or the noncitizen’s country of nationality is possible for an enumerated reason, Respondents must look to a country with one of six kinds of other tie to the noncitizen. 8 U.S.C. § 1231(b)(2)(E)(i)-(vi).
26. If, and only if, removal to a country in those six categories is “impracticable,

¹ <https://www.justice.gov/file/145816-0/dl>.

inadvisable, or impossible,” Respondents may then choose “another country whose government will accept the” noncitizen. 8 U.S.C. § 1231(b)(2)(E)(vii).

27. “Due process requires notice that is reasonably calculated, under all the circumstances, to apprise interested parties and that affords a reasonable time ... to make an appearance.” *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367-68 (2025) (cleaned up).
28. The Supreme Court has made clear that notice and a hearing are required before Respondents remove someone to a third country. *See A.A.R.P.*, 145 S. Ct. at 1367-68; *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025).
29. Regulations, including Respondents’ own regulations, also make clear that noncitizens should be given notice and an opportunity to contest removal to a third country before that removal occurs. In removal proceedings in immigration court, regulations require the immigration judge to identify both “the designated country of removal” and “all alternative countries to which the person may be removed.” Similar protections apply when Respondents reinstate a removal order. *See* 8 C.F.R. §§ 208.31, 241.8(e), 1208.31.
30. Only immigration judges, not Respondents or their employees, may make final determinations concerning whether a noncitizen is eligible for withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(C); 8 C.F.R. §§ 208.16(a) & (c)(4), 208.17(b), 1208.16(a), 1208.17(b)
31. Courts may entertain habeas petitions brought to prevent wrongful removals. *Heikkila v. Barber*, 345 U.S. 229, 234–235 (1953) (holding that habeas was the only cause of action available to challenge deportation under immigration statutes that “preclud[ed]

judicial intervention” beyond what was necessary to vindicate due process rights); *Nance v. Ward*, 597 U.S. 159, 167 (2022) citing *Heck v. Humphrey*, 512 U.S. 477, 487(1994) (Petitioner’s claims for relief “necessarily imply the invalidity” of their detention and removal and therefore implicate the core of the writ of habeas corpus).

STATEMENT OF FACTS

32. On or about February 21, 2025, Mr. Jabarkhel, his wife, and stepchildren entered the United States in Texas.
33. On or about February 22, 2025, Mr. Jabarkhel, his wife, and stepchildren were detained by U.S. Customs and Border Protection.
34. On or about February 26, 2025, the government sent Mr. Jabarkhel and his family to a detention facility in southern California where they were detained for approximately twenty days.
35. In mid-March 2025, ICE transferred Mr. Jabarkhel and his family to the Karnes County Immigration Processing Center in Karnes City, Texas, where they were detained together.
36. On or about April 1, 2025, ICE released Mrs. Jabarkhel and her children from detention.
37. On or about April 1, 2025, ICE transferred Mr. Jabarkhel to the South Texas Processing Center in Pearsall, Texas.
38. On or about May 24, 2025, ICE transferred Mr. Jabarkhel to the Joe Corley Detention Center in Conroe, Texas.
39. On or about December 10, 2025, ICE transferred Mr. Jabarkhel to the Houston Contract Detention Facility, which is almost directly adjacent to George Bush Intercontinental Airport.
40. Mr. Jabarkhel attended a credible fear interview, and DHS determined that he did not

have a credible fear of return to Afghanistan. Mr. Jabarkhel requested that Respondents remove him to Brazil, if Respondents seek to remove him to a third country.

41. To counsel’s knowledge, Respondents have not provided Mr. Jabarkhel with any opportunity to demonstrate a credible fear of persecution or torture in a third country.
42. Under a memorandum dated July 9, 2025, ICE “will *not* affirmatively ask whether [a noncitizen] is afraid of being removed to” a third country and will provide only 24 hours’ notice—and, in “exigent circumstances,” as little as six hours’ notice—that a third-country removal will occur. *See* Ex. 1.
43. Although there is a pending class action concerning third-country removals, *see D.V.D. v. DHS*, D. Mass. No. 25-cv-10676 (filed Mar. 23, 2025), Petitioner cannot receive effective relief through that class action. In an opinion without reasoning, the Supreme Court stayed the nationwide preliminary injunction in that case, *see DHS v. D.V.D.*, 145 S. Ct. 2153 (2025), and without intervention from this Court, Petitioner will be removed before the court in *D.V.D.* reaches a decision on the merits.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

44. Petitioner repeats and realleges the allegations contained in all preceding paragraphs of this Petition- as if fully set forth herein.
45. It appears that Respondents intend to imminently remove Petitioner to a third country but have not provided Petitioner with notice of the name of that country or an opportunity to contest removal to that country.

46. The Due Process Clause of the Fifth Amendment of the U.S. Constitution requires that a noncitizen receive reasonable notice and an opportunity to be heard before being removed to a third country.
47. The Due Process Clause of the Fifth Amendment of the U.S. Constitution requires a noncitizen to be able to seek withholding of removal to any third country in full proceedings held in immigration court under 8 U.S.C. § 1229a.
48. Respondents' plan to imminently remove Petitioner to an unnamed third country violates the Due Process Clause.

SECOND CLAIM

Violation of the Immigration and Nationality Act and its Implementing Regulations

49. Petitioner repeats and realleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.
50. The Immigration and Nationality Act, 8 U.S.C. § 1231(b)(2), contains comprehensive procedures concerning the removal of noncitizens to third countries.
51. Respondents may not remove Petitioner to a third country without following the procedures in § 1231(b)(2).
52. Respondents have not followed the procedures in § 1231(b)(2).
53. Respondents' plan to imminently remove Petitioner to an unnamed third country violates 8 U.S.C. § 1231(b)(2).

PRAYER FOR RELIEF

WHEREFORE, the petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Issue a temporary restraining order and preliminary injunction preventing

Respondents from transporting Petitioner outside the United States or outside this judicial District before the Court rules on this Petition;

- 3) Issue an Order to Show Cause returnable in three days ordering that the petition be served and the Respondents respond to the petition;
- 4) Declare that Respondents must follow the statutory procedure in 8 U.S.C. § 1231(b)(2) before removing Petitioner to any third country;
- 5) Declare that Respondents must provide Petitioner with notice and an opportunity to be heard before removing him to any third country;
- 6) Declare that Respondents must provide Petitioner with the opportunity to seek withholding of removal and relief under the Convention Against Torture in removal proceedings in immigration court as to any country to which they seek to remove him;
- 7) Issue a Writ of Habeas Corpus preventing Respondents from removing Petitioner to a third country except in accordance with the Immigration and Nationality Act and its implementing regulations;
- 8) Enjoin Respondents from removing Petitioner to a third country without both following the procedures in 8 U.S.C. § 1231(b)(2) and providing him with an opportunity to seek withholding of removal and relief under the Convention Against Torture in immigration court;
- 9) Award Petitioner reasonable attorneys' fees and costs for this action under the Equal Access to Justice Act, 28 U.S.C. § 2414; and
- 10) Grant the Petitioner any other relief this Court deems just and proper.

Dated: December 10, 2025

Respectfully submitted,

/s/ Farha Rizvi
Farha Rizvi (Texas Bar No. 24122999)
Refugee & Immigrant Center for Education
and Legal Services
P.O. Box 786100
San Antonio, TX 78078
T: (210) 951-8756
farha.rizvi@raicestexas.org

Verification by Farha Rizvi Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 10, 2025

/s/ Farha Rizvi
Farha Rizvi (Texas Bar No. 24122999)
Refugee & Immigrant Center for
Education and Legal Services
P.O. Box 786100
San Antonio, TX 78278
T: (210) 951-8756
farha.rizvi@raicestexas.org