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. IMMIGRATIONS AND CUSTOMS ENFORCEMENT; and U.S. DEPARTMENT OF JUSTICE,

Respondents.

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER STAYING REMOVAL AND STAYING TRANSFER OUTSIDE THIS DISTRICT

Petitioner Muhammad Iqbal Jabarkhel is a citizen of Afghanistan and 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 of removal from that country. It appears that Respondents will imminently remove Mr. Jabarkhel to a third country in violation of the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment. Mr. Jabarkhel respectfully requests an emergency temporary restraining order ("TRO") to prevent his removal from this judicial district pending a ruling on the merits of his habeas petition.

BACKGROUND

Mr. Jabarkhel has been detained by Respondents since February 2025 and has been detained in this district since May 2025. On or about December 10, 2025, Respondents 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. It is likely that Respondents intend to remove Mr. Jabarkhel to a third country: their 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. And Respondents provide only 24 hours' notice—and as little as *six* hours' notice—between the time a noncitizen is informed of a third country removal and the time the removal is effectuated.

Mr. Jabarkhel filed a habeas petition in this Court on December 10, 2025, alleging that his removal to a third country would violate the Immigration and Nationality Act ("INA") and his due process rights. Counsel for Petitioner has asked the U.S. Attorney's Office for the Southern District of Texas whether Mr. Jabarkhel will be removed to a third country and, if so, which country, but has not yet received a response. In order to preserve the status quo and this Court's jurisdiction pending resolution of his petition, and given the spped with which Respondents conduct third-country removals, Mr. Jabarkhel now moves for a TRO to prevent his removal from this district, and from the United States, to provide this Court with time to rule on the merits of his petition.

LEGAL STANDARD

Generally speaking, the standard for a TRO is the same as that for a preliminary injunction. *See Miss. Power & Light Co. v. Utd. Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). A TRO is thus appropriate if Petitioner shows a substantial likelihood of success on the merits; a substantial threat of irreparable harm if a TRO does not issue; and that the balance of the equities and the public interest favor issuance of a TRO. *See Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009). The equities and the public interest merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The All Writs Act ("AWA") separately empowers federal courts to preserve the integrity of their jurisdiction to adjudicate claims before them. *See* 28 U.S.C. § 1651(a) (authorizing federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"). A stay under the All Writs Act does not turn on an analysis of the four traditional factors for injunctive relief. Rather, the AWA empowers a federal court to "maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels," *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966), and a stay requires only "some ongoing proceeding … the integrity of which is being threatened by someone else's behavior." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004).

Using their authority under the AWA, courts routinely issue writs "in aid of jurisdiction" to enjoin conduct that, if "'left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.'" *Klay*, 376 F.3d at 1102. This includes the government's physical removal of a plaintiff or other obstructions of the court's jurisdiction. *E.g. Lindstrom v. Graber*, 203 F.3d 470, 474-76 (7th Cir. 2000)

(stay of extradition), *Kurnaz v. Bush*, Nos. 04-cv-1135(ESH), 05-cv- 0392(ESH), 2005 WL 839542, at *2 (D.D.C. 2005) (invoking the All Writs Act to limit the government's ability to transfer Guantánamo detainees to foreign countries). The Supreme Court recently reaffirmed as much. *See A.A.R.P. v. Trump*, 605 U.S. 91 (2025).

ARGUMENT

I. Mr. Jabarkhel Is Likely to Prevail on the Merits.

A. Removing Mr. Jabarkhel to a Third Country Without Notice and an Opportunity to be Heard Would Violate His Due Process Rights and the INA.

The INA prohibits Respondents from removing noncitizens to third countries 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 eligibility for withholding, *see id.* § 1231(b)(3)(B), Mr. Jabarkhel does not fall within any of those exceptions. Respondents would therefore be required to grant him withholding of removal from any country in which he is more likely than not to face persecution. *E.g., Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013). 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).

The Due Process Clause of the Fifth Amendment "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.*, 605 U.S. at 94-95 (cleaned up). The Supreme Court has made clear that notice and a hearing are required before Respondents remove someone to a third country. *See id.*; *Trump v. J.G.G.*, 604 U.S. 670, 672-73 (2025). Furthermore, 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).

Here, Respondents have not provided Mr. Jabarkhel with *any* type of process in which he can contest removal to any third country. To counsel's knowledge, Respondents have not even informed Mr. Jabarkhel of the country to which they intend to remove him. Mr. Jabarkhel is therefore likely to prevail on his claim that any removal to a third country would violate his due process rights. *See, e.g., Nguyen v. Scott*, 796 F. Supp. 3d 703, 727-29 (W.D. Wash. 2025) (granting a preliminary injunction based in part on insufficient process before a third-country removal). In fact, a court in this district has granted a preliminary injunction against a third-country removal on due process grounds because, while the noncitizen had received a screening interview as to the third country, the respondents refused to provide review by an immigration judge of the negative fear finding. *Sagastizado v. Noem*, ___ F. Supp. 3d ___, 2025 WL 2957002, at *10-*12 (S.D. Tex. Oct. 2, 2025).

B. Respondents Have Not Followed the Statutorily Required Procedures for Selecting a Country of Removal.

Although noncitizens who receive withholding of removal as to one country may be removed to another country if first provided with reasonable notice and an opportunity to be heard, 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). This statutory scheme consists of "four consecutive ... commands." *Jama v. ICE*, 543 U.S. 335, 341 (2005).

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]

Second, 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).

Third, if removal to neither the designated country nor 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 ties to the noncitizen. 8 U.S.C. § 1231(b)(2)(E)(i)-(vi).

Fourth and finally, if (and only if) removal to a country in those six categories is "impracticable, inadvisable, or impossible," Respondents may then choose "another country whose government will accept the" noncitizen. 8 U.S.C. § 1231(b)(2)(E)(vii).

Just as they have not provided Mr. Jabarkhel with notice and an opportunity to be heard, Respondents have not followed the statutory procedure in selecting his country of removal. Mr. Jabarkhel expressly designated Brazil as his country of removal. To counsel's knowledge, however, Respondents never asked Brazil whether it would accept Mr. Jabarkhel. To counsel's knowledge, Respondents also never followed the second and third steps of the process, instead choosing a country of removal on the sole basis that the country's government signed an agreement to accept noncitizens removed from the United States. Mr. Jabarkhel is therefore likely to prevail on his claim that his removal to a third country would violate the INA. *See, e.g.*, *Nguyen v. Bondi*, 2025 WL 3534168, at *8-*9 (W.D. Wash. Dec. 10, 2025); *Viengkhone S. v. Albarran*, 2025 WL 3521302, at *8-*9 (E.D. Cal. Dec. 8, 2025).

II. The Remaining Factors Support Entry of a TRO.

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[1] https://www.justice.gov/file/145816-0/dl.

There can be no question that Mr. Jabarkhel will suffer irreparable harm if removed to an unknown third country. Mr. Jabarkhel would find himself not only removed from the United States—where the rest of his family resides—but in a country in which he has no status, no ties, and no way to earn a living. It is also possible that Mr. Jabarkhel could face persecution or torture in that country, and it is not clear that Mr. Jabarkhel would be able to remain in the third country—or whether that country would return him to Afghanistan, from which he is seeking protection as a derivative on his wife's asylum application. *See Sagastizado*, 2025 WL 2957002, at *13-15. And in any event, "a finding of irreparable injury is mandated" where, as here, "a constitutional right is threatened or impaired." *Nuziard v. Minority Bus. Dev. Agency*, 676 F. Supp. 3d 473, 484 (N.D. Tex. 2023).

The balance of the equities and the public interest likewise favor the issuance of a TRO. Although Respondents have an interest in enforcing the immigration laws, the public interest weighs heavily in favor of requiring Respondents to follow the plain text of the INA and to ensure that noncitizens receive constitutionally mandated processes before being removed. *See, e.g.*, *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016); *see also Louisiana v Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022) ("There is generally no public interest in the perpetuation of unlawful agency action.") (quotation omitted). The public interest also favors the prevention of wrongful removals, and Mr. Jabarkhel seeks only the opportunity to prove that his removal to a third country would, in fact, be wrongful. *Nken*, 556 U.S. at 436.

III. In the Alternative, a Stay Under the All Writs Act is Appropriate

A stay of removal is independently appropriate under the AWA. If Respondents remove Mr. Jabarkhel to a third country—or even to another judicial district—that action would likely divest this Court of jurisdiction by placing Mr. Jabarkhel outside Respondents' custody. It

would also likely make the status quo ante impossible to restore, as the federal government has "represented elsewhere that it is unable to provide for the return of an individual deported in error." *A.A.R.P.*, 605 U.S. at 95 (citing *Abrego Garcia v. Noem*, No. 25-cv-961, Dkts. 74 & 77 (D. Md.)). A stay of removal under the All Writs Act is therefore appropriate.

Furthermore, a TRO ordering a stay under the AWA is modest relief that comports with Fifth Circuit precedent. *See Newby v. Enron Corp*, 302 F.3d 295 (5th Cir. 2002) (affirming a TRO under the AWA). In fact, across circuits, courts have issued temporary restraining orders to preserve habeas jurisdiction in the face of impending removals or transfers by Respondents, citing both the AWA and courts' inherent equitable authority. *See, e.g.*, *Rivero Busto v. Lyons*, 2025 WL 3520347 (D. Colo. Dec. 9, 2025); *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *14, 16 (D. Colo. Aug. 8, 2025) (staying removal of immigration habeas petitioner who sought, among other relief, a bond hearing); *Perez Parra v. Castro*, 2025 WL 435977 (D.N.M. 2025) (stopping removal of petitioners to Guantanamo Bay); *Zheng v. Bondi*, 2025 WL 2808542, at *1 (D.N.J. Sept. 26, 2025) (staying removal during pendency of case under AWA); *see also Santiago v. Noem*, 2025 WL 2606118, at *2 (W.D. Tex. Sept. 9, 2025) (enjoining removal during pendency of habeas case "under the Court's inherent power to preserve its ability to hear the case.").

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Respectfully submitted,

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