UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JEAN REMARQUE,
A [redacted]
Petitioner

vs.

CRAIG A. LOWE, Warden of Pike County Correctional Facility,
Respondent.

Case No.

MOTION FOR A TEMPORARY RESTRAINING ORDER (TRO) AND/OR PRELIMINARY INJUNCTION (PI)

Petitioner, Jean Remarque, (hereinafter "Mr. Remarque or "Petitioner") an immigration detainee currently held at the Pike County Correctional Facility in the custody of the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), appearing pro se, seeks habeas corpus relief under 28 U.S.C. § 2241 in relation to his unlawful detention under an order of removal that is void on its face.

Petitioner hereby respectfully moves the Court for the entry of Temporary Restraining Order and/or a Preliminary Injunction against the defendant enjoining enforcement of the order of removal to remove him from the continental United States and transferring him to a facility outside of this Court's jurisdiction during the pending final disposition of this action.

The grant of a preliminary injunction is necessary and proper in order to preserve the status quo and to prevent irreparable harm Mr. Remarque resulting from his wrongful removal just so long as is necessary to develop a fuller record and to hold a hearing, for no adequate remedy at law exists for the preservation and vindication of Petitioner's constitutional rights. Petitioner is ultimately likely to succeed on the merits of his action and the harm to Petitioner and to the public interest of not granting the requested injunctive relief outweighs the harm to defendant or any other third parties of granting such relief.

Respectfully submitted,

Dated: January 15, 2026

Jean Remarque
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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JEAN REMARQUE, [redacted] **Petitioner**	)	
vs.	)	**Case No.**
CRAIG A. LOWE, Warden of Pike County Correctional Facility, **Respondent.**	)	

BRIEF IN SUPORT OF PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER (TRO) AND/OR PRELIMINARY INJUNCTION (PI)

INTRODUCTION

Petitioner, Jean Remarque, (hereinafter "Mr. Remarque or "Petitioner") an immigration detainee currently held at the Pike County Correctional Facility in the custody of the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), appearing pro se, hereby respectfully submits this Brief in Support of his Motion for the entry of Temporary Restraining Order and/or a Preliminary Injunction against the defendant enjoining enforcement of the order of removal to remove him from the continental United States during the pending final disposition of this action.

The grant of a preliminary injunction is necessary and proper in order to preserve the status quo and to prevent irreparable harm to Mr. Remarque resulting from his wrongful removal just so long as is necessary to develop a fuller record and to hold a hearing, for no adequate remedy at law exists for the preservation and vindication of Petitioner's constitutional rights to be free from unlawful immigration detention. Petitioner is ultimately likely to succeed on the merits of his action and the harm to Petitioner and to the public interest of not granting the requested injunctive relief outweighs the harm to defendant or any other third parties of granting such relief.

LEGAL STANDARD: PRELIMINARY INJUNCTION

As the Third Circuit has explained:

"Preliminary injunctive relief is an extraordinary remedy, which should be granted only in limited circumstances." Ferring Pharms., Inc. v. Watson Pharms., Inc., 765 F.3d 205, 210 (3d Cir. 2014) (internal quotation marks omitted). Under the familiar standard of proof, a party "seeking a preliminary injunction must establish that [he] is likely to succeed on the merits, that [he] is likely to suffer irreparable harm in the absence of preliminary injunctive relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). "Generally, the moving party must establish the first two factors and only if these gateway factors are established does the district court consider the remaining two factors." Greater Phila. Chamber of Commerce v. City of Phila., 949 F.3d 116, 133 (3d Cir. 2020) (internal quotation marks omitted). If the gateway factors are met, "[t]he court then determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested

preliminary relief" Id. (internal quotation marks omitted). SEC v. Chappell, 107 F.4th 114, (3d Cir. 2024) (cleaned up).

A. Likelihood of Success on the Merits

In assessing Mr. Remarque's likelihood of success on the merits, the Court begins by determining whether the BIA's order of removal is void on its face because the Board in defiance of congressional intent and its own precedential case law simply refused to apply the categorical approach in determining whether a conviction under the statute involved a crime involving moral turpitude (CIMT) pursuant INA § 237(a)(2)(A)(i), 8 U.S.C. § 1227(a)(2)(A)(i) or child abuse pursuant to INA § 237(a)(2)(E)(i), 8 U.S.C. § 1227(a)(2)(E)(i). If so, Petitioner was removed when he should not have been and clearly suffered prejudice. If the order of deportation is unlawful, so is the detention.

1. Petitioner is Not Removable as Charged Under the INA for Immigration Detention Purposes

Under well-established precedent, Mr. Remarque is being mandatorily detained in violation of the Constitution of the United States and the Immigration and Nationality Act ("INA") because his criminal conviction under 18 U.S.C. § 2252A(a)(2)(A) does not trigger any of the enumerated grounds of removability under the INA. In particular, this conviction does not constitute a crime involving moral turpitude ("CIMT") or a crime of child abuse.

a) Relevant Principles of Statutory Construction

During his removal proceedings, Petitioner argued before the Immigration Court and the BIA that his statute of conviction, 18 U.S.C. S. 2252A(a)(2) encompasses both actual and

computer-generated or altered images of child pornography, which rendered his conviction categorically overbroad because the least culpable conduct under the statute doesn't involve neither moral turpitude nor child abuse. Id. See 18 U.S.C.S. 2256(8). The Board acknowledged Petitioner's argument that the plain language of the statute criminalizes receipt of computer-generated and altered images of child pornography and would thus seemingly permit a conviction for receiving completely computer-generated images of child pornography. See Exhibit F. But then the BIA turned around and explained that "the Supreme Court decision in Free Speech Coalition rendered moot that portion of the statutory language, as it expressly held that possession of virtual child pornography is not a criminal offense. (citing Ashcroft v. Free Speech Coalition, 535 U.S. 234, 239-40, 258 (2002)). Therefore, the Immigration Judge properly found that, regardless of the plain language of the statute, there was no realistic probability that the statute would apply in cases not involving actual children."

It is a well-established principle that when applying criminal laws, courts generally "must follow the plain and unambiguous meaning of the statutory language. '[O]nly the most extraordinary showing of contrary intentions' in the legislative history will justify a departure from that language." Salinas v. United States, 522 U.S. 52, 57 (1997) (quoting United States v. Albertini, 472 U.S. 675, 680 (1985)) (internal quotation mark omitted) (alteration in Salinas). A statute is unambiguous if it is "plain to anyone reading the Act" that the statute encompasses the conduct at issue. Salinas, 522 U.S. at 60 (quoting Gregory v. Ashcroft, 501 U.S. 452, 467 (1991)). "No rule of construction . . . requires that a penal statute be strained and distorted in order to exclude conduct clearly intended to be within its scope." Id. at 59 (quoting United States v. Raynor, 302 U.S. 540, 552 (1938)) (internal quotation marks omitted). Section 2252A,

however, is extremely broad in scope. See United States v. Payne, 394 Fed. Appx. 891, 896 (3d Cir. 2010).

In this case, the BIA violated a basic principle of statutory construction by usurping Congress's legislative role and violated separation of powers principles by effectively rewriting the statutory definitions of child pornography under the PROTECT Act, 18 U.S.C. § 2256(8) to fit their policy preference, specifically by disregarding two subsections of the statute § 2256(8)(B) and § 2256(8)(C)[1], which refer to non-photographic and computer-generated depictions, relying on Free Speech Coalition to circumvent or avoid the categorical approach. The BIA demonstrates a profound misunderstanding of Free Speech Coalition and the subsequent response provided by Congress.

The BIA cannot invalidate or ignore provisions of a duly enacted statute, that power lies with the courts. Free Speech struck down portions of the CPPA as unconstitutional, but did not erase section 2256(8)(B) of the PROTECT Act altogether. The BIA's role is to apply the law, not rewrite it based on perceived Congressional intent or policy preferences. Separation of powers principles here forbid such usurpation. Wood v. Hoy, 266 F.2d 825 (9th Cir. 1959), (the BIA's interpretation of the statute improperly rewrote "the statute as if it read 'single criminal act). "Rewriting the statute, however, is the job for the U.S. Congress, if it is so inclined, and not for this court." H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 249 (1989). Such manipulation of the

[1] Free Speech Coalition struck down as unconstitutional the words "or appears to be" from the definition of child pornography contained in § 2256(8)(B) and the entire definition of child pornography in § 2256(8)(D). Contrary to the BIA's contention, it left intact the ban on morphed child pornography § 2256(8)(C). 122 S. Ct. at 1406.

statutory framework by administrative fiat undermines both the integrity of the administrative adjudication, fundamental due process and equal protection under the law.

b) Methodological Direction

The BIA's failure to apply the categorical approach in determining a CIMT requires reversible error per se and renders the order of removal void. It is well established that to determine whether a petitioner's conviction is a CIMT [or crime of child abuse], the federal courts must apply the categorical and modified categorical approaches articulated by the Supreme Court in Taylor v. United States, 495 U.S. 575, 599-602 (1990); Moncrieffe v. Holder, 569 U.S. 184, 190-95(2013) (citing Carachuri-Rosendo v. Holder, 560 U.S. 563, 580 (2010) (noting the word "conviction" is "the relevant statutory hook" requiring application of the categorical approach)); Matter of Moradel, 28 I&N Dec. 310, 316–17 (BIA 2021). In Descamps, the Supreme Court emphasized the necessity of looking to the elements of the crime under the categorical approach, rather than to the underlying circumstances or motivations. See id. at 2285. The Court said that a "circumstance-specific review is just what the categorical approach precludes." Id. at 2292.

In the immigration context, that approach is tethered to one term in the Immigration and Nationality Act as amended - the word 'convicted,' see 8 U.S.C. § 1227(a)(2)(A); Pereida v. Wilkinson, 592 U.S. 224, 233 (2021) - and it examines whether all possible convictions for an identified offense, even those under the least culpable circumstances, would satisfy the relevant federal standard, which, here, is status as a CIMT [or crime of child abuse]. See Borden v. United States, 593 U.S. 420, 424 (2021) (explaining that the categorical approach asks whether of the acts criminalized, "even the least culpable" satisfies the federal standard); Partyka, 417

F.3d at 411 ("[W]e read the applicable statute to ascertain the least culpable conduct necessary to sustain a conviction under the statute."); Sasay v. Att'y Gen., 13 F.4th 291, 296 (3d Cir. 2021) (same); Larios, 978 F.3d at 69 (same); Francisco-Lopez v. Att'y Gen., 970 F.3d 431, 435 (3d Cir. 2020) (same); Jean-Louis v. Att'y Gen., 582 F.3d 462, 470 (3d Cir. 2009) (same); Knapik v. Ashcroft, 384 F.3d 84, 88 (3d Cir. 2004) (same). Thus, while means and elements are distinct legal concepts, for a prior conviction to qualify as a CIMT under the categorical approach, every means of committing that offense must satisfy the two CIMT elements - reprehensible conduct and a culpable mental state. See Jean-Louis, 582 F.3d at 471 ("As a general rule, a criminal statute defines a crime involving 'moral turpitude only if all of the conduct it prohibits is turpitudinous.'" (quoting Partyka, 417 F.3d at 411)); see also Larios, 978 F.3d at 67. So, rather than using a "circumstance-specific thrust," the categorical approach does not depend on the actual factual basis for the predicate convictions. See Rosa v. Att'y Gen., 950 F.3d 67, 73 (3d Cir. 2020).

c) The BIA Arbitrarily and Capriciously Bypassed the Legal Framework to Issue a Wholly Void Order of Removal

Here, the BIA improperly bypassed the legal framework established by the Supreme Court and the Third Circuit, which requires strict analysis of the statutory elements, to instead apply a policy-based interpretation of section 2256(8), and misapplied the realistic probability test contrary to controlling precedent. See Singh v. Att'y Gen., 839 F.3d 273 (3d Cir. 2016). The categorical approach requires a comparison of statutory elements, not an evaluation of underlying conduct or policy concerns. The least culpable conduct under the statute of conviction criminalizes receipt, possession or distribution of purely computer-generated image (such as

A.I.-generated images) that does not involve the sexual abuse or exploitation of any minor in its production. But the BIA tries to avoid this obvious and commonsensical conclusion by invoking the "realistic probability" test. But the Third Circuit repeatedly emphasized that the realistic probability test does not apply when the statute is facially overbroad. See Larios v. AG of the United States, 978 F.3d 62, 67 (3d Cir. 2020); Jean-Louis v. Att'y Gen., 582 F.3d 4623 (3d Cir. 2009). Here, the statutory text itself establishes overbreadth. See sections 2256(8)(B) and (C), that is the end of inquiry as both the Board and a court must give effect to the intent of Congress.

The BIA's heavy reliance on Free Speech Coalition is misplaced and belied by inconsistencies in its own reasoning. As stated above, that case was interpreting a statutory provision not at issue in this case. The categorical approach requires analyzing the PROTECT Act as it existed at the time of conviction, not as previous judicial decisions may have construed its predecessor (CPPA). See Moncrieffe v. Holder, 569 U.S. 184 (2013). The BIA's reasoning improperly imports ante-hoc judicial narrowing that was never codified by Congress and disregards cardinal principal of statutory construction. Such logical fallacy created by the IJ and the BIA must be rejected by the Court.

d) BIA Misconstrued Circuit Precedent for the Realistic Probability Exception to the Categorical Approach

The Supreme Court has invoked realistic probability only twice, and in both cases it noted that the realistic probability is a check on the application of "legal imagination" to the criminal statute. See Gonzales v. Duenas-Alvarez, 549 U.S. 183, 193 (2007); Moncrieffe v. Holder, 569 U.S. 184, 206 (2013). See Ndungu v. Att'y Gen., 126 F.4th 150, 171 (3d Cir. 2025). Where no "legal imagination" is required to demonstrate overbreadth—for example, where the express

language terms of the statute cover conduct outside of the removability provision—a realistic probability showing is not required at all. Requiring a realistic probability showing in these circumstances would severely undermine the categorical approach and its least-acts-criminalized presumption. Gonzalez v. Wilkinson, 990 F.3d 654, 660 (8th Cir. 2021) (explaining that the government's rule is "at odds with the categorical approach itself" because it focuses on the underlying facts and not "the language of the statutory offense") Jack v. Barr, 966 F.3d 95, 98 (2d Cir. 2020) (finding that by applying a realistic probability test, "the BIA applied the wrong legal standard and displayed a fundamental misunderstanding of the categorical approach").

The Third Circuit has correctly adopted, in precedential decisions, the rule that the realistic standard does not apply if the express terms of the criminal statute cover conduct outside of the INA removability provision. See e.g. Larios v. Att'y Gen., 978 F.3d 62, 72 (3d Cir. 2020) (the realistic probability test never applies when assessing crimes of moral turpitude under the categorical (or modified approaches); see also Jean-Louis v. Att'y Gen., 582 F.3d 462, 477 (3d Cir. 2009) ("We seriously doubt that the logic of the Supreme Court in Duenas-Alvarez … is transferable to the CIMT context."). This rule is consistent with the Supreme Court precedent and the categorical approach.

Therefore, the BIA's contrary rule applied in Mr. Remarque's case should not apply in this Circuit. See Matter of U. Singh, 25 I&N Dec. 670, 672 (BIA 2012) ("We apply the law of the circuit in cases arising in that jurisdiction, but we are not bound by a decision of a court of appeals in a different circuit."). Notably, the BIA specified that its interpretation of the realistic probability requirement as articulated in Navarro Guadarrama "should be applied in any circuit that does not have binding legal authority requiring a contrary interpretation." 27 I&N Dec. 560,

565-67 (BIA 2019). The Board in defiance of its own binding precedent arbitrarily and capriciously did exactly the opposite-it violated every binding precedent from the Third Circuit to reach its conclusion.

Here, although the plain language of the statute itself establishes a realistic probability that the Government would prosecute conduct that falls outside the Federal definition of CIMT and crime of child abuse, to obtain a categorical match between Petitioner's federal offense and the removability provisions, the BIA relied on a distinct variation of realistic-probability considerations. It examined whether "the minimum conduct [for which Petitioner had] a realistic probability of being prosecuted under the statute entails 'reprehensible conduct' to warrant treatment as a CIMT [or a crime of child abuse]." Id. The BIA found that because there is "no realistic probability" of prosecuting computer-generated or morphed child pornography under 2256(8)(B)-(C), the statute of conviction is limited to real minors. Id. That reverses the analytical sequence mandated by Duenas-Alvarez, 549 U.S. at 183. But this Court has not applied realistic-probability considerations that way.

In Singh v. Attorney General, 839 F.3d 273 (3d Cir. 2016), this Court recognized that in both Duenas-Alvarez and Moncrieffe, the elements of the state crime and its counterpart federal offense were identical. Id. at 286 n.10. And on that ground, Singh limited the realistic-probability analysis to instances in which the elements of the state crime and the federal offense were identical. Id. Subsequent cases have followed that narrow application of realistic-probability principles. See Salmoran v. Att'y Gen., 909 F.3d 73, 81 (3d Cir. 2018) (recognizing that this Court's precedent "takes [an] alternative approach" in which the realistic probability analysis in Moncrieffe does not apply unless the elements of the state and federal offenses were identical);

Zhi Fei Liao v. Att'y Gen., 910 F.3d 714, 724 (3d Cir. 2018) (declining to apply a realistic probability analysis when the elements of the offense "leave nothing to the legal imagination" (internal quotation omitted)); see also United States v. Jenkins, 68 F.4th 148, 154 (3d Cir. 2023); Cabeda v. Att'y Gen., 971 F.3d 165, 176 (3d Cir. 2020).

The BIA is required to respect those decisions and move on. That is, in Petitioner's humble judgment, what the law requires.

Rather than abide by that limitation, the BIA applied realistic-probability considerations as a means of arriving at a categorical match - not to negate or preserve a preexisting match. The BIA's "realistic-probability considerations may have improperly demanded proof of actual prosecutions under the broader statutory scope, a higher bar than required. Accordingly, it was not permissible for the BIA to rely on realistic-probability considerations as it did. See Salmoran, 909 F.3d at 81. According the order of removal is void on its face. If the order of deportation is unlawful, so is the detention.

2. Petitioner's Detention is Unlawful

Petitioner was not convicted of a violation of a law relating to a CIMT or a crime of child abuse within the meaning of the INA. It follows that the order of deportation is void on its face and the detention of petitioner is unlawful. At present, no remedy but habeas corpus exists, the petition for review to the Court of Appeals for the Third Circuit does not address the issue of Petitioner's unlawful detention. Resort to writ of habeas corpus is not barred by failure to have utilized remedies which are unavailable if the petitioner challenges the validity of the order for

his detention for reasons which appear on the face of the record as distinguished from review of administrative procedures and findings.

B. The Other Preliminary Injunction Factors Favor Granting Relief Regarding the Issue of Notice

In addition to likelihood of success on the merits, Mr. Remarque must show that he is "likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." SEC v. Chappell, 107 F.4th 114, 126 (3d Cir. 2024). Under the Immigration laws, the Immigration Judge was required to review Petitioner's Form I-751 to remove the conditions on his permanent legal status, but arbitrarily declined to do so under the false premise that Petitioner's conviction for a CIMT would render such relief against removal futile. Id.

Accordingly, in the context of the INA, the law is far from settled, and current events (such as the travel ban executive order on citizens of Haiti and the executive order hold placed on the issuance of new immigrant visas for Haiti citizens among other countries) make it unclear whether individuals who are removed from the country but are not actually subject to removal (that is, individuals who are removed in error) will be able to return. See e.g., G.F.F. v. Trump, No. 25-CV-2886, 2025 U.S. Dist. LEXIS 86961, 2025 WL 1301052, at *10 (S.D.N.Y. May 6, 2025). Therefore, in this context, on the record now before this Court, and given the current status of this case, Petitioner urges this Court to find that Mr. Remarque has shown a likelihood of irreparable harm in the absence of preliminary relief.

Finally, with respect to the balance of the equities and the public interest, because Petitioner is neither an aggravated nor a national security threat, and is currently detained, he is

not posing a risk to public safety. And if this Court does not grant Petitioner injunctive relief, there is a significant risk that he would be deprived of the rights due him under Supreme Court precedent. Id Therefore, the Court should find that the two remaining factors support the grant of a preliminary injunction in this case.

CONCLUSION

WHEREFORE, for the above reasons, Petitioner respectfully requests this Court to grant his Motion for a Preliminary Injunction against the defendant enjoining enforcement of the Order of Removal against Petitioner pending final disposition of this action.

Respectfully submitted,

Dated: January 15, 2026

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