UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Ravidath Lawrence RAGBIR

Petitioner

vs.

Jefferson SESSIONS III, in his official capacity as the Attorney General of the United States; Kirstjen NIELSEN in her official capacity as Secretary of Homeland Security; Thomas DECKER, in his official capacity as New York Field Office Director for U.S. Immigration and Customs Enforcement; Scott MECHKOWSKI, in his official capacity as Assistant New York Field Office Director for U.S. Immigration and Customs Enforcement; and the U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents

Case No.: 1:18-cv-236

PETITIONER'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MOTION TO VACATE PORTIONS OF THE COURT'S ORDER OF JANUARY 11, 2018

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INTRODUCTION

On January 11, 2018, Petitioner Ravidath Lawrence Ragbir ("Mr. Ragbir") was suddenly detained by officials from Immigration and Customs Enforcement ("ICE") in front of his U.S. citizen wife and his legal representative, *see* Ex. A, Declaration of Alina Das, Esq. at ¶ 27. Mr. Ragbir's arrest and detention violate his rights under the Due Process Clause of the United States Constitution, the Immigration and Nationality Act ("INA"), and numerous regulations.

Although Mr. Ragbir is subject to a final order of removal dating back over a decade, he was released by the government in 2008 under an order of supervision after approximately twenty-two months in immigration detention because of his outstanding equities, which proved to be only the beginning of a process of institutional and government recognition of his contributions to community, and determinations that no legitimate purpose would be served by Mr. Ragbir's detention and removal. Until January 11, 2018, Mr. Ragbir was living peaceably in the community with his family, serving as Executive Director of New Sanctuary Coalition, an interfaith network that helps immigrants navigate the immigration system. Mr. Ragbir reported regularly to ICE and complied with his conditions of release.

After being taken into custody on January 11, 2018, Mr. Ragbir, through undersigned counsel, brought a habeas petition and complaint with this Court in order to vindicate his rights and redress the unlawful revocation of his order of supervision and administrative stay of removal and his unlawful detention. Mr. Ragbir also sought a temporary stay of removal to allow the Court to fully consider the merits of his petition and a temporary restraint from transferring him out of the New York area so that he could maintain access to counsel, family, and community. *See* Petition for Writ of Habeas Corpus, ECF No. 1.

At or around 4:15 p.m. the day of Mr. Ragbir's detention, this Court signed an Order to Show Cause, temporarily staying Petitioner's removal and enjoining the Government from transferring Petitioner outside of the New York region *pendente lite*. *See* Order to Show Cause, ECF No. 11. The Court had full authority to issue this order. At 4:45 p.m., 30 minutes after this Court entered its order and over three hours after the Government was placed on notice that Mr. Ragbir would be filing an Order to Show Cause, United Airlines flight 1923 took off from Newark Liberty International Airport to Miami with Mr. Ragbir on board. *See* Das Decl. at ¶ 34-35. Since January 11th, Mr. Ragbir has been detained at Krome Service Processing Center ("Krome"), approximately 1,300 miles from his U.S. citizen wife and family, his retained counsel who has represented him for a decade, his community, and the District of New Jersey, where he has a pending petition for coram nobis to attack the underlying conviction that serves as the basis for his removal order. *Id.* This transfer deprives Mr. Ragbir of his constitutional right to due process and his statutory right to counsel of his own choosing, has made it exceptionally difficult for Mr. Ragbir's attorneys to represent him, and is in contravention of this Court's order. Mr. Ragbir also faces unwarranted, prolonged detention, as the Government insists on incarcerating him while he fights his immigration case, despite the fact that he has for many years been living in the community, fully complying with an ICE order of supervision.

In lieu of transferring Mr. Ragbir back to the New York region and/or releasing him from detention, the Government has continued to detain him at Krome. The Government further moves to vacate the temporary relief—both the restraint on transfer and the stay of removal—provided in the Court's order. For the reasons stated in Petitioner's habeas petition and application for an Order to Show Cause, this Court should compel the Government to transfer

Petitioner back to the New York region and reject the Government's motion to vacate both the temporary restraint on transfer and the temporary stay of removal already entered in this case.

ARGUMENT

I. The Government is in Clear Contravention of this Court's January 11, 2018 Order.

The Government's transfer of Mr. Ragbir to Miami, Florida and refusal to fly him back to the New York region thwarts and directly interferes with this Court's order of January 11, 2018. The Government denies acting in contravention of the Court order temporarily restraining Respondents from transferring Mr. Ragbir outside the New York area. Gov't Br. at 1. It states, without evidentiary support, that Mr. Ragbir was placed on a plane before the order was signed. *Id.* However, even assuming this is correct, it is uncontroverted that the Government refuses to bring Mr. Ragbir back to the jurisdiction despite its admitted awareness by January 11, 2018 at 4:22 p.m. of the order, *id.* at 2, which this Court has not vacated. There are approximately 68 flights from Miami to New York each day, yet Mr. Ragbir has remained far from his family, clergy, community, and legal counsel for the last four days since the order issued. *See* Ex. F, Miami International Airport Flight Schedules. The Government offers no explanation why its ongoing failure to return Mr. Ragbir to the jurisdiction is not in contravention of the order. The Government's refusal to comply with a federal court order because it disagrees with its legal basis is unconstitutional and an alarming affront to judicial authority and the rule of law. *Maness v. Meyers*, 419 U.S. 449, 458 (1975);[1] *Howat v. Kansas*, 258 U.S. 181, 189-90 (1922) ("It is for the court of first instance to determine the question of the validity of the law, and until its

[1] *Id.* ("We begin with the basic proposition that all orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal. Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.")

decision is reversed for error by orderly review . . . its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.").

Moreover, the Government does not deny that it was aware as of 1:29 p.m. on January 11, 2018, that Mr. Ragbir would be seeking this relief and that it nonetheless committed the very act—putting Mr. Ragbir on a plane out of this jurisdiction—that Mr. Ragbir argues constitutes an irreparable harm. The Government's own legal position to the Supreme Court is that such actions may violate ethical obligations. *Cf. Hargan v. Garza*, No. 17-654, Petition for Writ of Certiorari (S. Ct., filed Nov. 3, 2017) at 26-28 (DOJ petition arguing that disciplinary action should be taken against opposing counsel due to their efforts to effectuate an abortion pursuant to a court order because counsel was aware that the DOJ would be shortly seeking a stay pending appeal).

II. This Court has the Inherent Authority to Issue Temporary Orders to Protect Its Jurisdiction and the Petitioner's Access to the Court in this Case

In contesting portions of this Court's January 11, 2018 order on jurisdictional grounds, the Government ignores the distinction between the temporary and permanent forms of relief sought by Mr. Ragbir. At this juncture of the case, the only issue is whether this Court has the power to issue temporary orders (to enjoin transfer and issue a stay) *pendente lite*. Where there is jurisdiction over the case itself, the Court has the inherent authority to issue temporary orders *pendente lite*. Such inherent authority stems from this Court's power to protect both its own jurisdiction and Mr. Ragbir's access to the courts. Nothing in the INA addresses, let alone strips, this Court of its authority to issue these forms of temporary relief.

A. This Court has jurisdiction over this case.

With respect to the permanent relief sought by Mr. Ragbir, this Court has jurisdiction over the underlying petition and complaint in this case under 28 U.S.C. §§ 2241, 1331, 1651, and 2201; the Administrative Procedure Act ("APA"), 5 U.S.C. § 706; and Article I, § 9, cl. 2 of the

United States Constitution. Mr. Ragbir has raised numerous meritorious claims in the habeas petition and complaint, challenging his unlawful detention, revocation of his administrative stay of removal and order of supervision in violation of statutory, regulatory, and constitutional authorities. *See e.g.*, *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 493 (S.D.N.Y. 2009) (petitioner's challenge to her continued detention as in violation of the INA and her Due Process rights was "clearly within the habeas jurisdiction of this Court") (citing *Henderson v. I.N.S.*, 157 F.3d 106 (2d Cir. 1998)). Moreover, the Government stated in its briefing that it planned to deport Mr. Ragbir on the morning of January 12, 2018, admitting to a clear intent to violate yet another regulatory authority, 8 C.F.R. § 241.22, which prohibits deportation less than 72 hours after an individual's arrest. Gov't Br. at 5. This admission by the Government only strengthens Mr. Ragbir's habeas claims. *See Fong v. Ashcroft*, 317 F. Supp. 2d 398, 402 (S.D.N.Y. 2004) (granting habeas relief and ordering return of Petitioner who was deported in violation of 8 C.F.R. § 241.22's 72-hour rule, which was specifically enacted to ensure due process protections to individuals facing imminent removal).

The Government has not yet challenged this Court's jurisdiction over the underlying petition and complaint, although it suggests that it may. *See* Gov't Br. at 6 ("To the extent that Mr. Ragbir's habeas petition is an attempt to defeat ICE's ability to execute his final removal order, Congress has precluded habeas challenges to 'a decision or action by the Attorney General to . . . . execute removal orders against any alien.'" (quoting 8 U.S.C. § 1252(g))). Any argument that this Court lacks jurisdiction over the entire petition and complaint would be without merit.

As the Second Circuit has held, there is "a 'strong presumption in favor of judicial review of administrative action.'" *Ruiz v. Mukasey*, 552 F.3d 269, 273 (2d Cir. 2009) (citing *Nethagani v. Mukasey*, 532 F.3d 150, 154 (2d Cir. 2008)). Indeed, the APA provides that "'[a] person

suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof,' . . . unless review is precluded by statute or the complained-of decision was committed to agency discretion." *Id.* at 273; *see also Sharkey v. Quarantillo*, 541 F.3d 75, 84 (2d Cir. 2008).

Nothing in the INA strips district courts of their jurisdiction to review the legality of someone's detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (holding that district courts retain habeas authority to review the lawfulness of detention because such review is not review of a discretionary decision). The various jurisdiction-stripping provisions cited by the Government in 8 U.S.C. § 1252 are cabined to review of purely discretionary decisions and are thus inapplicable here. This Court has jurisdiction to review the lawfulness and constitutionality of the Government's actions in detaining Mr. Ragbir and revoking his administrative stay and order of supervision because the Government does not have discretion to violate its own laws or the Constitution. *See Myers & Myers, Inc. v. U.S. Postal Service*, 527 F.2d 1252, 1261 (2d Cir. 1975) ("It is, of course, a tautology that a federal official cannot have discretion to behave unconstitutionally or outside the scope of his delegated authority").

However, to the extent the Government will contest this Court's jurisdiction over the habeas petition and complaint with respect to Mr. Ragbir's substantive claims and the permanent relief he seeks, it is beyond dispute that a "federal court always has jurisdiction to determine its own jurisdiction." *Ruiz*, 536 U.S. at 628 (quoting *United States v. United Mine Workers*, 330 U.S. 258, 291 (1947)). Thus, at minimum, this Court retains jurisdiction to determine its jurisdiction, and thus may issue temporary orders *pendente lite* as required.

B. This Court has inherent authority to protect its jurisdiction and Mr. Ragbir's access to the courts through temporary orders.

Having established that this Court has jurisdiction over the case at hand, the only remaining question is whether the Court has the authority to issue temporary orders to restrain transfer and stay removal *pendente lite*. As explained below, the Court does have this authority—to protect both its jurisdiction as well as Mr. Ragbir's access to the courts.

First, federal courts have "inherent power" to issue orders necessary to their jurisdiction over a pending case. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see id.* at 58 (Scalia, J., dissenting) ("Some elements of that inherent authority are so essential to the [Article III] judicial Power, that they are indefeasible, among which is a court's ability to enter orders protecting the integrity of its proceedings."). As such, Article III courts' inherent powers can be limited by only the clearest statutes or rules. *See Califano v. Yamaski*, 422 U.S. 682, 705 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions...."). None of the statutes cited by the Government limit temporary restraints on transfer or temporary stays of removal issued in individual litigation.[2]

Second, federal courts have inherent authority to protect litigants' access to the courts. *See Bounds v. Smith*, 430 U.S. 817, 824 (1977) (holding that the Constitution guarantees litigants "meaningful access to the courts"). This is particularly true in the habeas context. *See Johnson v. Avery*, 393 U.S. 483, 485 (1969) ("Since the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom, it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed.").

[2] The only provision in the INA that limits certain forms of injunctive relief is 8 U.S.C. § 1252(f). The Government does not attempt to argue that § 1252(f) bars this Court's temporary orders, nor could it. Section 1252(f) is broken into two subsections. The first subsection explicitly states that it does not apply to courts' authority to restrain or enjoin actions against "individual aliens." 8 U.S.C. § 1252(f)(1); *Reno v. AADC*, 525 U.S. 471, 481-82 (1999) (stating that subsection (f)(1) "specifies that this ban does not extend to individual cases"). The second subsection refers to courts' authority to "enjoin . . . removal" and refers only to *permanent* injunctions of *removal*, not temporary stays of removal or injunctions of actions other than removal. § 1252(f)(2); *Nken v. Holder*, 556 U.S. 418, 432 (2009) (holding that § 1252(f)(2) does not apply to temporary stays of removal).

This Court's issuance of both a temporary restraint on transfer and a temporary stay of removal *pendente lite* protects this Court's jurisdiction and Mr. Ragbir's access to Court to address his claims. *See* Points III & IV, *infra* (discussing harms that these temporary orders prevent). Because the Court has inherent authority to issue these temporary forms of relief, the Government's jurisdictional arguments are without merit.

III. This Court Should Reject the Government's Motion to Vacate the Court's Temporary Restraint on Transfer, and Should Order the Government to Return Mr. Ragbir to the New York Region.

A. This Court has jurisdiction to issue a temporary restraint on the Government from moving a petitioner from the region, and to order that petitioner's return.

This Court has jurisdiction to restrain the Government temporarily from transferring a petitioner from the region and to order that petitioner's return. As explained above, a temporary restraint on transfer merely protects this Court's jurisdiction and is part of its inherent powers. *See* Point II, *supra*. Nothing in the INA speaks to this Court's power to issue temporary orders *pendente lite*. The Government collapses the distinction between temporary and permanent relief by arguing that the Court's ability to issue and enforce its January 11, 2018 order is barred by 8 U.S.C. § 1252(a)(2)(B)(ii), a provision which has nothing to do with temporary orders related to cases that have an independent basis for jurisdiction. Indeed, courts in this district have routinely issued temporary restraints on the transfer of immigrants from the jurisdiction pending adjudication of their habeas petitions. *See, e.g.*, *Abadir v. Shanahan*, 11-cv-4041 (NRB); *Garcia v. Shanahan*, 09 CV 2995 (CM); *Monestime v. Reilly, et al.*, No. 10 CIV 1374 (WHP); *Paz Nativi v. Shanahan*, No. 1:16-cv-08496 (JPO); *Terrones v. Shanahan*, No. 1:16-cv-08465 (JPO); *Trawally v. Shanahan*, No. 11 Civ. 7335 (PGG) (orders to show cause with temporary restraint on transfer, attached at Ex. I).

Moreover, even if there were no distinction between temporary and permanent orders with respect to transfer decisions, the restraint in this Court's January 11, 2018 order is not barred by 8 U.S.C. § 1252(a)(2)(B)(ii). The INA bars judicial review of "any . . . decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is *specified under this subchapter* to be in the *discretion* of the Attorney General or the Secretary of Homeland Security[.]" 8 U.S.C. § 1252(a)(2)(B)(ii) (emphasis added). The Second Circuit has observed that § 1252(a)(2)(B)(ii) strips courts of jurisdiction to review "*purely discretionary* decisions." *Noble v. Keisler*, 505 F.3d 73, 76 (2d Cir. 2007) (emphasis added). Whether a decision or action is discretionary is determined by reference to the terms of the relevant statute. *See Bondarenko v. Chertoff*, No. 07-MC-00002, 2007 WL 2693642, at *4 (W.D.N.Y. Sept. 11, 2007) ("The key to § 1252(a)(2)(B)(ii) lies in its requirement that the discretion giving rise to the jurisdictional bar must be 'specified' by statute.") (internal quotations omitted). Unless a statute "specifies" that the Attorney General or the Secretary of Homeland Security has been granted discretion, § 1252(a)(2)(B)(ii) does not strip the court of jurisdiction. *Spencer Enter.*, 345 F.3d at 690 (In enacting § 1252(a)(2)(B)(ii), Congress did not intend to withdraw jurisdiction over all discretionary decisions, only those where the INA specifies, "the right or power to act is entirely within his or her judgment or conscience"). To establish that § 1252(a)(2)(B)(ii) bars review of Mr. Ragbir's transfer, the Government must point to a section of the INA that "specifies" detention placement decisions to be within ICE's unfettered discretion. No such language exists.

The INA mandates that the "Attorney General *shall* arrange for *appropriate* places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 123l(g)(1) (emphasis added). Section 1231(g)(1) makes clear that such decisions on arrangements for detention are not purely discretionary. Such decisions must be "appropriate." Furthermore, §

1231(g)(1) mandates a specific act. *See United States v. Monsanto*, 491 U.S. 600, 607 (1989) (by using the words "shall order" in the statute, "Congress could not have chosen stronger words to express its intent" that the procedure specified in the statute was mandatory); *cf. Atsilov v. Gonzales*, 468 F.3d 112, 116 (2d Cir. 2006) (where statute used permissive "may" instead of mandatory "shall" in authorizing agency to grant relief, the "ultimate decision whether to grant relief [was] entrusted to the discretion of the [agency]"). Such commanding language precludes the possibility that the section specifies a purely discretionary decision.

This is consistent with the Second Circuit's recognition of "the 'strong presumption in favor of judicial review of administrative action." *Sepulveda v. Gonzales*, 407 F.3d 59, 62 (2d Cir. 2006) (quoting *INS v. St. Cyr*, 533 U.S. 289, 298 (2001), and holding that § 1252(a)(2)(B) does not strip courts of jurisdiction to review nondiscretionary decisions). Because jurisdiction over this case is not prohibited, this Court has jurisdiction to restrain the Government from moving a petitioner from the region, and to order that petitioner's return. *Ruiz*, 552 F.3d at 273-74 ("To the extent that it is not otherwise prohibited, then, a district court may properly exercise jurisdiction over this case.").

The cases cited by the Government are thus inapposite. The Government cites to *Gandarillas-Zambrana v. Bd. of Immigr. Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995) for the principle that the agency "necessarily has the authority to determine the location of detention of an alien in deportation proceedings [] and therefore, to transfer aliens from one detention center to another." But the Attorney General's authority to transfer detainees does not shield those decisions from limitations and review. The only decisions shielded from review are those "specified" by the INA to be within the *sole* discretion of the agency; *Gandarillas-Zambrana* does not make such a holding. The Government's reliance on *Van Dinh v. Reno*, 197 F.3d 427,

433 (10th Cir. 1999), *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985), and *Avramenkov v. INS*, 99 F. Supp. 2d 210 (D. Conn. 2000) suffers from this same defect: while these cases hold that the agency has authority to transfer detainees as "appropriate" (a proposition that Petitioner does not deny), none establish that unfettered discretion is "specified" such that it would divest this Court of jurisdiction. Accordingly, the Attorney General must exercise his authority under section 123l(g)(l) in a manner consistent with Mr. Ragbir's constitutional and statutory rights.

Moreover, even if this Court were to find that ICE placement decisions are "specified" in the INA as a matter of agency discretion, § 1252(a)(2)(B)(ii) is incapable of barring judicial review of constitutional claims. "[D]ecisions that violate the Constitution cannot be 'discretionary,' so claims of constitutional violations are not barred by § 1252(a)(2)(B)." *Kwai Fun Wong v. United States*, 373 F.3d 952, 963 (9th Cir. 2004); *see also Salazar v. Dubois*, No. 17-cv-2186 (RLE), 2017 WL4045304 at *1 (S.D.N.Y. Sept. 11, 2017) (showing that a transfer would infringe on petitioner's constitutional rights would be enough to allow the Court to issue an order to change or keep Salazar at any particular location). As discussed below, transferring Mr. Ragbir infringed upon his constitutional rights. *See* Point III.B, *infra.* Similarly, reading the statute to bar this Court from issuing a temporary restraint would raise serious constitutional concerns by limiting the Court's Article III powers. *See* Point II, *supra*.

Part and parcel of this authority is the power to bring petitioners back to the jurisdiction from which they should not have been transferred. Because the initial order enjoining transfer pending this litigation was lawful, so too may the Court order the Government to comply with its order. *See Orantes-Hernandez v. Meese,* 685 F. Supp. 1488, 1509 (C.D. Cal. 1988), *aff'd* 919 F.2d 549, 565-66 (9th Cir. 1990) (ordering that transferred detainees be returned "to the district in which venue is set sufficiently in advance of any proceeding in order to allow the detainee

adequate time to consult with counsel"); *see also Fong v. Ashcroft*, 317 F. Supp. 2d 398, 402 (S.D.N.Y. 2004) (granting habeas relief and ordering return of Petitioner who was deported unlawfully); *Zheng v. Decker*, No. 14-cv-4663 (MHD), 2014 WL 7190993 at *16 n.31 (S.D.N.Y. Dec. 12, 2014) (refusing to accept the Government's argument that "an order relating to the location of one's detention is not a cognizable form of relief in a habeas petition").

Indeed, such an order would be necessary to prevent the ongoing harms that Mr. Ragbir is suffering. *See* Point III(B), *infra* (discussing irreparable harm due to transfer).

B. The Government's refusal to return Mr. Ragbir to the New York region is causing him irreparable harm.

A party seeking a preliminary injunction must demonstrate, among other factors, irreparable injury absent injunctive relief. *See Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30 (2d Cir. 2010). An irreparable harm is one that cannot be redressed through a monetary award. *JSG Trading Corp. v. Tray-Wrap, Inc.*, 917 F.2d 75, 79 (2d Cir. 1990). As discussed *infra*, the Government's transfer of Mr. Ragbir has already caused and will continue to cause Mr. Ragbir irreparable harm by impeding his access to his counsel, family, clergy, and community.

1. The Government's transfer of Mr. Ragbir interferes with his access to counsel.

The Government argues that Mr. Ragbir has no Sixth Amendment right to counsel in immigration cases, without acknowledging that courts and its own agency have long held that an immigrant's right to access to counsel is well-recognized under the INA and the Due Process Clause. Gov't Br. at 3; *see* 8 U.S.C. § 1362 ("Petitioners have a right to counsel, at no expense to the government, to challenge their removal"); *see also Romero v. I.N.S.,* 399 F.3d 109, 112 (2d Cir. 2005) (recognizing that noncitizens may pursue ineffective assistance of counsel claims

under the Due Process Clause); *Baires v. INS*, 856 F.2d 89, 91 n. 2 (9th Cir. 1988) ("We have characterized an alien's right to counsel as 'fundamental'") (internal citations omitted).

The alleged violation of a constitutional right creates a presumption of irreparable injury. *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996). This Court has held that prison regulations and practices which "unjustifiably obstruct", "infringe", "unreasonably burden", or "significantly interfere" with access to counsel violates a criminal detainee's Sixth Amendment right to counsel. *Benjamin v. Fraser*, 264 F.3d 175, 187 (2d Cir. 2001). An immigrant detainee's right to counsel is protected by the Constitution and infringement thereof constitutes irreparable harm.

To protect detainees' rights to access counsel of their choosing, courts have repeatedly enjoined immigration officials from transferring detainees where such transfers interfered with established and ongoing attorney-client relationships.[3] *See Louis v. Meissner,* 530 F. Supp. 924, 927 (S.D. Fla. 1981) (finding INS had thwarted detainees' statutory and regulatory rights to representation in exclusion proceedings by transferring them to remote areas lacking in counsel and interpreters); *Rios-Berrios*, 776 F.3d at 863 (holding that noncitizen's transfer, among other issues, deprived him of due process); *Orantes-Hernandez*, 685 F. Supp. at 1509 (recognizing right to challenge transfer that would interfere with petitioners' right to counsel and ordering that transferred detainees be returned); *Hamama*, 261 F. Supp. at 40-41 (holding that ICE's transfer of detainees "severely disrupt[ed]" their right to counsel, where detention center was located 4

[3] The Government's duty not to obstruct access to courts and counsel also protects detainees' right of telephonic access to their legal representatives. *Johnson by Johnson v. Brelje,* 701 F.2d 1201, 1207 (7th Cir.1983); *see also Nunez v. Boldin,* 537 F. Supp. 578, 582–83 (S.D. Tex. 1982) ("Access to the courts also includes the means to prepare for legal proceedings and to communicate outside the gates of the detention facility."). That protection extends to cover detainees' privacy in their communications with their attorneys. *Am. Civil Liberties Union Fund of Michigan v. Livingston Cty.*, 796 F.3d 636, 643 (6th Cir. 2015) (citing *Kensu v. Haigh*, 87 F.3d 172, 174 (6th Cir. 1996) (A "prisoner's interest in unimpaired, confidential communication with an attorney is an integral component of the judicial process . . .").

hours drive from counsel, legal calls were limited to 15 minutes, and detainees were unable to make free calls to pro bono counsel).

In this case, with respect to both in-person and telephonic communication with counsel, Mr. Ragbir is already suffering irreparable harm. The Immigrant Rights Clinic has represented Mr. Ragbir since 2008. Das Decl. at ¶ 3. In addition to this lawsuit, counsel for Mr. Ragbir represents Mr. Ragbir on several open legal matters, including a petition for a writ of coram nobis in the District of New Jersey challenging the conviction that is the basis of his removal order; a motion to reopen his removal proceedings with the Board of Immigration Appeals; and a pardon application. *See id.* at ¶ 12. Each of these legal matters requires counsel to be able to communicate confidentially and promptly with Mr. Ragbir. *See id.* at ¶ 16. Each of these matters relies heavily on voluminous documentary evidence and testimony of Mr. Ragbir regarding his 2001 conviction; counsel must be able to review this highly technical documentation with Mr. Ragbir through in person visits and discuss these matters confidentially.

The Government claims that there are no access to counsel issues with holding Mr. Ragbir in Krome, first because "attorneys may visit their clients in person." As the Government is aware, Mr. Ragbir is represented by a law school clinic, pro bono. Das. Decl. at ¶ 6. As the Government is also aware, Mr. Ragbir's primary supervising attorney is not able to fly because she is in her third trimester of pregnancy. *Id.* at ¶ 45. Even if other members of his legal team are able to go to Miami to speak with him, the time and expense of travel is prohibitive to the prompt communication required for the legal challenges Mr. Ragbir is pursuing, particularly given the pace of the Government's efforts to remove Mr. Ragbir.

The Government also states "attorneys may call their clients (and clients may call their attorneys) from 6 a.m. to 11 p.m." and that while calls are monitored, there is access to a "private

room" for unmonitored calls and video-conferencing. Gov't Br. at 3. As an initial matter, attorneys do not have the ability to call their clients at Krome. *See* Gov't Decl. of Pedro Cresente, III (noting only that detainees can call their attorneys); Das Decl. at ¶ 44, 46, 51; Ex. B, Declaration of Sui Chung, Esq. at ¶ 14 (confirming that there is no way to make a private call to a detainee). While a client may call their attorney, these calls are costly, monitored, and recorded, and are made from a phone located in the main living areas of the facilities, making them neither private nor confidential. *See* Chung Decl. at ¶ 18.

These difficulties are immediately apparent in the instant case, even over the last few days. On January 11, 2018, Counsel requested information from ICE about Mr. Ragbir's whereabouts, but received no response. *See* Das Decl. Counsel was only informed by Government's counsel of Mr. Ragbir's location at 9:41 p.m., when the information appeared on an online locator system. *Id.* at ¶ 40. At that point, there was no way to contact Mr. Ragbir, nor was there any way for him to call family or counsel, since phone calls from people detained can be made only after someone is aware of the person's location and can put money into their phone accounts. *Id.* at ¶ 44.

After counsel was informed of Mr. Ragbir's location, Mr. Ragbir's family put money into his phone account. Das Decl. at ¶ 42. Due to the length of his processing, he was only permitted to call out at 6:15 a.m. on Friday, January 12, 2018, when he called his wife, Amy Gottlieb. *Id.* He then called counsel at approximately 9 a.m. *Id.* Both of these calls were recorded and monitored. *Id.* Shortly thereafter, ICE agents placed Mr. Ragbir in a van to be taken to the airport, preventing Mr. Ragbir from making further phone calls. *Id.* at ¶ 43. Mr. Ragbir asked whether he was being returned to New York or if he was being deported, and officers refused to answer. *Id.* After the van left the facility, it turned back twice, and Mr. Ragbir was eventually

returned to Krome, where he was re-processed. *Id.* He was afforded phone access again sometimes after 6 p.m. that Friday, when he called his wife. *Id.* He stated he also asked for a legal call but was told that such requests must be approved by a supervisory ICE agent who was not available at that time. *Id.*

While all of this was happening, counsel for Mr. Ragbir attempted to reach ICE officers both at the New York Field Office and at Krome to arrange a legal call with Mr. Ragbir. Each person she spoke with confirmed that there was no mechanism for her to call Mr. Ragbir directly and that counsel should come in person to have unmonitored access to Mr. Ragbir. *Id.* at ¶ 44. Only after concerted advocacy did an ICE officer say he would see what could be done to arrange a legal call. *Id.* at ¶ 52. At approximately 7:40 p.m., a supervisory ICE officer at Krome called counsel for Mr. Ragbir and said given the "special nature" of the case he would try to arrange a legal call that night. *Id.* He noted that there is a single private room for all of the several hundred people held at Krome to speak confidentially with a lawyer by phone, but that people in detention need to make a special request, which must be approved by a supervisor, to use that room, given the fact that an ICE officer must arrange to escort the person to that room and stand outside and watch the person make the call, and then escort him back. *Id.*

At approximately 8:30 p.m., Mr. Ragbir called his counsel, indicating that he was taken to a room where he was told he was given an unmonitored line and told he could speak to his attorney for 10 minutes. *Id.* The call was cut off at 10 minutes despite counsel expressing a desire to speak in more depth about certain confidential legal issues. *Id*; *see also* Chung Decl. at ¶ 18 (confirming that it is impossible to have more than a short phone conversation with clients).

This "access" is patently insufficient to prepare Mr. Ragbir for his legal proceedings. As discussed *supra*, counsel must be able to meet with Mr. Ragbir in person to collect and sign

documents and communicate confidentially. If Mr. Ragbir were detained in one of the facilities located within the jurisdiction of the New York City ERO Field Office, these limitations would be greatly diminished. Two of the three detention facilities in the area are accessible by car and public transportation; the third is accessible by a reasonable car ride. Das Decl. at ¶ 36. Counsel would be able to visit in person with Mr. Ragbir as frequently as necessary and meet in a private room to discuss his case.

2. Mr. Ragbir's transfer is irreparably harming his access to family, clergy, work, and community.

Mr. Ragbir's transfer also causes irreparable harm by detaining him far from his family, clergy, work and community. *See Jimenez v. Napolitano*, No. C-12-03558 RMW, 2012 WL 3144026, at *7 (N.D. Cal. Aug. 1, 2012) (granting stay of removal and finding that irreparable harm in the form of, *inter alia*, separation from family members, is probable); *Borjas-Calix v. Sessions*, No. CV-16-685-TUC-DCB, 2017 WL 1491629, at *3 (D. Ariz. Apr. 26, 2017) (granting motion to enjoin government from re-detaining plaintiff and finding that if re-detained, plaintiff would experience irreparable harm, including "separation from family and loss of employment"). Mr. Ragbir's wife, Amy Gottlieb, was born and raised in Brooklyn, NY, and works at a Quaker nonprofit organization. To visit her husband this Sunday, January 14, 2018, during the one time block permitted for family visits to Mr. Ragbir, Ms. Gottlieb had to pay $721 for a flight and hotel room, only to see him for one hour during a restricted morning time block, during which time she had to speak to him via a phone, separated by plexiglass. *See* Ex. E, Receipts for Flight and Hotel; Ex. D, Krome Detention Facility Visitation Policies. Ms. Gottlieb cannot afford to regularly fly from New York to Florida to visit with her husband, particularly

given the restrictive family visitation policies at Krome Detention Facility,[4] nor can Mr. Ragbir's extended family, clergy, and colleagues.[5] Das Decl. at ¶ 54-55.

The New York ICE Field Office has jurisdiction over three detention facilities in the New York region, where Mr. Ragbir's family, counsel, clergy, and community could regularly visit Mr. Ragbir in person, ensuring that his access to counsel and legal representation as well as his access to family and community is preserved.[6]

IV. This Court Should Reject the Government's Motion to Vacate the Court's Order Temporarily Staying Removal Pending Adjudication of Mr. Ragbir's Habeas Petition and Complaint.

As the Supreme Court held in *Nken v Holder*, "[a]n [noncitizen] seeking a stay of removal . . . does not ask for a coercive order against the Government, but rather for the temporary setting aside of the source of the Government's authority to remove." 556 U.S. 418, 419 (2009). By ignoring *Nken* and relying on § 1252(g), the Government misstates the nature of federal court authority to issue a stay, which is grounded in its inherent authority to issue temporary stays to protect its jurisdiction, as well as 28 USC § 1651, the All Writs Act. Section

[4] Family visits are limited at Krome to one day per week based on the detainee's last name, with each visit limited to one hour. Ex. D, Krome Detention Facility Policies. In contrast, at Hudson County Correctional Facility and Orange County Correctional Facility, the primary ICE detention facilities in the New York City jurisdiction, families are permitted to visit five days per week should they wish. Ex. G, Visitation Policies of NYC Facilities

[5] Mr. Ragbir's transfer also causes irreparable harm because his sudden detention, combined with the out-of-state transfer within hours of arrest, prohibits him from being able to communicate with his co-workers and transition the leadership of his nonprofit organization, the New Sanctuary Coalition of New York City (NSC). Mr. Ragbir is the Executive Director of a nonprofit organization with five staff members and approximately 1,000 volunteers, which provides outreach services to immigrant communities. Das Decl. ¶ 54 Mr. Ragbir is responsible for the organization's funding, reporting, and work with elected officials and faith leaders. *Id.* Upon information and belief, the organization has already missed a funding reporting deadline due to Mr. Ragbir's detention far from his staff. *Id.* Mr. Ragbir's return to the New York area would allow his staff to visit him to discuss their work, and allow his organization to best continue serving the community in the event of Mr. Ragbir's continued detention or removal.

[6] As detailed in Petitioner's Memorandum of Law, ECF No. 11, all other factors support the Court's issuance of a temporary restraint. Mr. Ragbir has shown a likelihood of success on the merits of his habeas petition, satisfying the remaining requirements for a temporary restraining order. *Id.* Returning Mr. Ragbir to this jurisdiction would be a minor cost to the Government, which by its own admission frequently moves people throughout the country as it desires. Particularly given the extensive irreparable harm, the balance weighs greatly in favor of a temporary restraint on transfer and return to the New York region.

1252(g) does not strip the Court of this authority, and if it were to do so, it would raise serious constitutional concerns under the Suspension Clause.

A. This Court has both jurisdiction over this case and the inherent authority to issue a stay of removal to protect its jurisdiction.

As noted in Point II, *supra*, this Court has jurisdiction over Mr. Ragbir's habeas petition and complaint to this Court, and both the authority and duty to protect its ability to review these matters. This is particularly vital in the habeas context. The Supreme Court has instructed: "It must never be forgotten that the writ of habeas corpus is a precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired." *Bowen v. Johnston*, 306 U.S. 19, 26 (1939). The federal district courts are "generally the first responders when rights guaranteed by the Constitution require protection." *Hamama v. Adducci*, 258 F. Supp. 3d 828, 829 (E.D. Mich. 2017) (internal quotations omitted) (granting temporary stay of removal). A temporary stay of removal is necessary to protect the jurisdiction of this Court to fully and fairly consider the merits of Mr. Ragbir's petition and the vindication of his legal rights.[7]

Contrary to the Government's arguments, this Court has inherent authority to issue a temporary stay pending its consideration of the petition and complaint, *see* Point II, *supra*, as well as independent authority under 28 U.S.C. § 1651, *see* Point IV(B), *infra*. Recognizing such, multiple Courts have issued temporary stays of removal in order to provide the Court with the requisite time to consider the underlying relief sought. *See Hamama v. Adducci*, 261 F. Supp. 3d 820 (E.D. Mich. 2017) (ordering a 90+ day stay of removal pending consideration of habeas

[7] The Government implies that Mr. Ragbir's habeas petition would have been moot because he would have been released from detention (i.e., deported) the morning of January 12, 2018 were it not for this Court's order to temporarily stay his removal. The implied equivalence between release from detention within the United States, where Mr. Ragbir would be permitted to remain with his family while he pursues his pending legal matters, and deportation where Mr. Ragbir would be separated from his family and permanently barred from returning to the U.S., is absurd. Further, it fails to account for three of the five causes of action raised in Mr. Ragbir's habeas petition, which challenge the unlawful act of detention, not solely the duration of Mr. Ragbir's detention.

challenge to re-detention, finding a stay necessary to ensure ability to pursue legal challenges to removal); *Ibrahim v. Acosta*, No. 17-cv-24574-GAYLES (S.D. Fla. Dec. 19, 2017) (ordering a stay of removal pending consideration of habeas challenge, as well as provision of reasonable access to counsel); *Devitri v. Cronen*, No. 17-11842-PBS (D. Mass. Sept. 26, 2017) (ordering a stay of removal in order to maintain status quo pending consideration of habeas challenge to removal); *Neth v. Marin*, No. SACV 17-01898-CJC(GJSx) (C.D. Ca. Dec. 14, 2017) (ordering a stay of removal pending consideration of habeas challenge to re-detention, noting that a stay was necessary given the speed with which the Government intended to remove Petitioners); *Sied v. Duke*, 17-cv-06785-LB, 2017 WL 6316821 (N.D. Ca. Dec. 11, 2017) (ordering a stay of removal pending consideration of habeas challenging removal, to allow time for Petitioner to file a motion to reopen and noting that counsel had not yet been able to visit with Petition in detention); *Darweesh v. Trump*, 17-cv-480 (AMD) (E.D.N.Y. Jan. 28, 2017) (ordering a stay of removal pending consideration of habeas petition challenging removal and detention); *Kabenga v. Holder*, 76 F. Supp. 3d 480, 486 (S.D.N.Y. 2015) (ordering a stay of removal pending consideration of habeas challenge to validity of underlying removal order); *Jimenez v. Napolitano*, C-12-03558 (RMW), 2012 WL 3144026 (N.D. Ca. 2012) (ordering a stay of removal pending consideration of habeas petition).

B. The All Writs Act provides this Court with independent statutory authority to issue a temporary stay of removal.

This Court is also independently bestowed with authority to issue a temporary stay of removal by the All Writs Act, which allows federal courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The All Writs Act does not enlarge or expand the jurisdiction of the district court but instead confers ancillary authority where jurisdiction is otherwise present and

already lodged in the court. This ancillary authority allows courts to enter orders necessary to safeguard their jurisdiction, when that jurisdiction has another basis. *See, e.g., Penn. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 41 (1985) (describing Act as filling the interstices of federal judicial power when those gaps threaten to thwart the otherwise proper exercise of federal courts jurisdiction); *Dennis v. I.N.S.*, No. 01-279, 2002 WL 295100, at *3 (D. Conn. Feb. 19, 2002) (same). In this case, the Court has subject-matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 2241, 1331, 1651, and 2201; the APA, 5 U.S.C. § 706; and Article I, § 9, cl. 2 of the United States Constitution.

As such, this Court has the authority under the All Writs Act to issue a temporary stay in connection with its subject-matter jurisdiction over the underlying claims, in order to aid in its ability to review the Petition validly before it. As the Supreme Court stated in *Nken v. Holder*, an "appellate court's power to hold an order in abeyance while it assesses the legality of the order" is "'inherent'" and stems from the All Writs Act. 556 U.S. at 426. The Court further explained that the "power to grant a stay pending review. . . [is] part of a court's 'traditional equipment for the administration of justice.'" *Id*. at 427 (quoting *Scripps-Howard Radio, Inc. v. F.C.C.*, 316 U.S. 4, 9-10 (1942)). As such, this Court had jurisdiction to grant Mr. Ragbir's motion for stay of removal under both its inherent authority and the authority conferred by the All Writs Act, a "'power as old as the judicial system of the nation.'" *Id*. (quoting *Scripps-Howard* at 17). Given the Government's clear intention to remove Mr. Ragbir from the United States as soon as possible, *see* Gov't Br. at 5, the Court's order on January 11, 2018 granting a temporary stay of removal was an appropriate and authorized use of a temporary stay of removal in order to protect its ability to review the constitutional and legal questions around his detention, which validly bestow jurisdiction on this Court.

C. Contrary to the Government's arguments, 8 U.S.C. §§ 1252(a)(5) and 1252(g) do not strip this Court of its jurisdiction and authority to issue a temporary stay of removal in this case.

This Court's authority to issue a temporary stay of removal in Mr. Ragbir's case is unaffected by 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(a)(5). Section 1252(g) addresses the Court's jurisdiction to hear any cause or claim arising from the decision by the Attorney General "to execute removal orders." Section 1252(a)(5) addresses federal court jurisdiction to review the entry or issuance of an order of removal. Neither of these legal questions is at issue in the instant case, nor do these provisions of the INA affect the Court's inherent authority and authority under 8 U.S.C. § 1651 to grant a temporary stay of removal.

The limitations on judicial review of an Attorney General's decision to "commence proceedings, adjudicate cases, or execute removal orders", section 1252(g), only limit district courts from reviewing these three types of decisions, and cannot be read as expansively as Respondents suggest. Indeed, Respondents argue for the precise broad application that is rejected in the Supreme Court's holding in *Reno v. American-Arab Anti-Discrimination Committee*. 525 U.S. 471, 482 (1999) ("It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings . . . . We are aware of no other instance in the United States Code in which language such as this has been used to impose a general jurisdictional limitation."). Mr. Ragbir's habeas petition challenges the constitutional, statutory, and regulatory violations that occurred in conjunction with his detention on January 11, 2018. Pet'n at ¶¶ 33-59. As he does not challenge the ultimate decision to execute his removal order, this case is not governed by 8 U.S.C. § 1252(g). Nor is this case governed by 8 U.S.C. § 1252(a)(5) since Mr. Ragbir does not challenge the underlying order of removal, but rather the lawfulness and constitutionality of his detention.

Further, §1252(g) must be read together with § 1252(f)(2), as interpreted by the Supreme Court in *Nken*. *Nken v. Holder*, 556 U.S. 418 (2009). § 1252(f)(2) limits the ability of lower courts to "enjoin or restrain" operation of certain INA provisions. In *Nken*, the petitioner sought a stay of removal while he petitioned the Fourth Circuit to reopen his immigration case. While the Government argued that § 1252(f)(2) required a strenuous evidentiary showing to obtain a stay, the Supreme Court agreed with Nken that the "traditional stay factors," described in Part IV(E), *infra*, governed his case. The Court reasoned that § 1252(f)(2) was not "reasonably understood to be directed at stays" because the text of § 1252(f)(2) could not overcome the presumption that traditional stay factors govern for stay requests. *Id*. at 432. In this case, the Government seeks to overcome the same presumption through its reading of § 1252(g). They do so by suggesting a reading of the statute that would bar virtually *any* motion seeking a stay, even when the request does not arise from a one of the discrete decisions or acts by the Attorney General as required by § 1252(g). But here too, the Government "has not overcome the 'presumption favoring the retention of long-established and familiar principles.'" *Id*. (quoting *Isbrandtsen Co. v. Johnson,* 343 U.S. 779, 783 (1952)). Just as the *Nken* court determined that the stricter standard in §1252 must be set aside for the "traditional stay factors," this Court should not be deprived of its customary power to grant a stay in Mr. Ragbir's case. *Id*. at 436. As explained in Part IV(B), *supra*, the established rule is that courts retain jurisdiction over a stay request when there is an independent basis of jurisdiction.[8] *See e.g., Jimenez v. Napolitano*, C-

[8] The cases cited by Respondents are inapposite as most of the cases cited were decided before the Supreme Court decided *Nken*, which clarified that courts are not stripped of their power to issue temporary stays of removal. The only cases cited that are after *Nken*, *Velasquez v. United States*, 2015 WL 4619805 (S.D.N.Y. Aug. 3, 2015) and *Delgado v. Quarantillo*, 643 F.3d 52 (2d Cir. 2011), do not touch on the issue before this Court in the instant case. As the court in *Velasquez* noted, "whether the court has jurisdiction will turn on the substance of the relief that a plaintiff is seeking." 2015 WL 4619805, at *3. In *Delgado*, the Petitioner sought mandamus relief in the form of an affirmative immigration benefit that the court held was a collateral attack on the validity of her removal order and, as such, was barred by § 1252(g). Mr. Ragbir's petition is not a collateral attack on his removal order, but rather a challenge to the lawfulness of his arrest and detention.

12-03558 (RMW), 2012 WL 3144026 (N.D. Ca. 2012) ("where the stay of removal is interim relief to allow the court itself to adjudicate a permissible underlying claim, . . . § 1252(g) does not deprive it of jurisdiction"(citing *Dhillon v. Mayorkas*, 2012 WL 1338132 (N.D. Cal. 2010)).

Respondent's claim that the stay granted by this Court is barred by § 1252(g) similarly misunderstands the proper scope of § 1252(g) and its relationship to 8 U.S.C. § 1651. By its own title and language, § 1252(g) is addressed exclusively to limiting jurisdiction. Because Congress intended § 1252(g) to bar suits filed in district court whose sole purpose was to stay or enjoin removal proceedings, *see, e.g.*, *Reno,* 525 U.S. at 485 (suit in district court to enjoin removal proceedings), the plain text of § 1252(g) speaks only of jurisdiction. It is well settled that the All Writs Act confers ancillary authority, not jurisdiction, in aid of jurisdiction conferred elsewhere.[9] The difference between jurisdiction and ancillary authority is at the heart of All Writs Act jurisprudence. *See, e.g., Penn. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 41-42 (1985). Because the All Writs Act is not itself jurisdictional, a jurisdiction-stripping provision like § 1252(g) is irrelevant to the authority that the All Writs Act provides. As such, section 1252(g) does not divest this Court of its authority under the All Writs Act.[10] *See e.g., Fuller v. INS*, 144 F.Supp.2d 72, 83 (D. Conn. 2000) (relying on All Writs Act to ordering return when immigrant had been removed in violation of a stay); *Dennis v. INS*, 2002 WL 295100 at *3 n. 3 (ordering return when immigrant had been removed after improper *in absentia* order); *see also Michael v. INS,* 48 F.3d 657 (2d Cir. 1995) (All Writs Act authorizes an appellate court to grant a stay pending its eventual review of a removal order).

[9] *See* 14A Wright & Miller, Federal Practice and Procedure § 3691 (3d ed. 2010) (All Writs Act is "not a base of jurisdiction"); *United States v. Denedo*, 129 S. Ct. 2213, 2222 (2009) (recognizing that "[t]he authority to issue a writ under the All Writs Act is not a font of jurisdiction," nor is it "a source of subject-matter jurisdiction").

[10] The Government does not address or contest Mr. Ragbir's arguments that the balance of factors weighs in favor of a stay grant in this case, and this Court already issued its order for a temporary stay of removal on the basis of Petitioner's arguments. *See* Memorandum of Law at §§ I to IV, ECF No. 11.

D. Depriving this Court of its authority to issue a temporary stay of removal would violate the Suspension Clause of the Constitution.

The Government's reading of § 1252 would violate Article I, § 9, cl. 2 of the United States Constitution (the "Suspension Clause") as applied in the instant case. The Supreme Court has explained that "the Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). As such, the Suspension Clause provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The Suspension Clause applies in deportation cases. *I.N.S. v. St. Cyr*, 533 U.S. 289, 300 (2001).

In the instant case, the Respondent's interpretation of § 1252 violates the Suspension Clause because there is no substitute collateral remedy that is both adequate and effective in protecting Mr. Ragbir's ability to vindicate his legal rights related to his detention. *Boumediene v. Bush*, 553 U.S. 723, 733 (2008). Respondents urge that the proper forum for seeking a stay of removal is the Court of Appeals and the Board of Immigration Appeals. Gov't Br. at 7. However, neither of those courts is able to review Mr. Ragbir's challenges to the constitutionality and lawfulness of his detention—jurisdiction over those matters rests with this Court in the first instance. Thus only this Court can protect its jurisdiction over thos specific claims and Mr. Ragbir's access to the Court through a temporary stay pending adjudication of this case. . Since Mr. Ragbir's will be unable to access the Writ of Habeas Corpus absent a temporary stay of removal, and there is no adequate substitute, the Court should find that a temporary stay of removal is permitted in order to avoid violation of the Suspension Clause. *See e.g., Hamama v. Adducci*, 258 F. Supp. 3d 828, 829 (E.D. Mich. 2017) (holding that the Court had jurisdiction to grant a stay of removal in order to preserve the fundamental right of habeas corpus).

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Respectfully submitted,

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