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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

S.F.,	)	Case No.
	)	
Petitioner,	)	3:25-cv-01084-MTK
	)	
vs.	)	Agency No.
	)	
DREW BOSTOCK, Seattle Field Office	)	A 
Director, U.S. Immigration and Customs	)	
Enforcement and Removal Operation, et al.	)	PETITIONER'S BRIEF IN
	)	SUPPORT OF TRO
Respondents.	)	

This case is guided by the principles of due process, habeas corpus and of the relevant statute, which is 8 USC § 1231. Section 1231(b)(1)(A) and (B) direct that, in general, removal of an alien be to the country where the alien boarded the airplane or vessel which carried the alien to the United States.

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If the government of such country refuses to accept the alien, then section 1231(b)(1)(C) applies, which provides, in relevant part, that removal may be made to a “country with a government that will accept the alien into the country’s territory[.]”

The statute further provides, in 8 U.S.C. § 1231(b)(3)(A) that “notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.”

I. Effect of criminal convictions.

There are four exceptions to 8 USC § 1231(b)(3)(A). These are set out in 8 USC § 1231(b)(3)(B). Of these exceptions, only the one contained in paragraph 1231(b)(3)(ii) appears relevant. That exception states that 1231(b)(3)(A) shall not apply if “the Attorney General decides that * * * the alien, having been convicted by a final judgment of a particularly serious crime is a danger to the community of the United States[.]”

There are two ways that a conviction may be deemed to be a “particularly series crime.” Section 1231(b)(3) states that “[f]or purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”

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The following table is petitioner's summary of his final criminal convictions.

Offense	Date of conviction	Sentence (summary)
[REDACTED]		

None of these crimes were punished by a sentence for “aggregate term of imprisonment of at least five years.” 8 USC § 1231(b)(3). But the Attorney General may still rule, on a case-by-case basis, that an offense is a “particularly serious crime” regardless whether it is an aggravated felony with a five year sentence. *Matter of N-A-M-*, 24 I&N Dec. 336, 338 (BIA 2007). As of the filing of this brief, there has been no such decision by the Attorney General.

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1 Successfully completed and case dismissed on December 13, 2017.

2 Respondents assert that petitioner was convicted of delivery of a controlled substance to a minor. But this conviction was reversed on appeal and the conviction vacated. According to the court docket sheet, petitioner was convicted after a jury trial on August 9, 2010, on six counts, the most serious of which was count 1, [REDACTED]

[REDACTED] Petitioner's conviction was reversed on appeal on the grounds that the trial court had failed to give a curative jury instruction following an improper closing argument by the prosecutor. Upon remand, five of the six counts were dismissed, with the petitioner pleading guilty to count 6. [REDACTED]

3 There were four probation violations.

4 Probation was later revoked and a criminal sentence imposed.

5 There were two probation violations. Probation was successfully completed on May 18, 2023.

6 Financial obligations of \$94,508.50, of which \$88,207.00 remained unpaid as of July 7, 2025.

II. Importance of filing a motion to reopen.

Under 8 USC § 1231(b)(3)(B), it is the Attorney General, not the Department of Homeland Security who decides whether an alien would face persecution in a country, and whether an offense is a “particularly serious crime.” The only way to seek such a decision under the current posture of the case is to present a motion to reopen the petitioner's case to the the BIA.

Under the regulations of the Department of Justice, an alien generally is required to present a motion to reopen to the Board of Immigration Appeals within ninety (90) days of the immigration judge's final order, and a party is permitted to file only one motion to reopen. 8 CFR § 1003.23(b)(1).

The time and numerical limitations do not apply to a motion to reopen based on a request for asylum, withholding of removal (“restriction on removal”), or protection under the Convention Against Torture, that is premised on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. See 8 C.F.R. § 1003.23(b)(4)(i).

III. Summary of the motion to reopen to be filed with BIA.

Petitioner intends to present motion to the BIA based on changed country conditions. While this requires a complex and detailed showing be made to the BIA, in

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summary, these changed country conditions are that on June 21, 2025, the United States bombed a number of nuclear production facilities in Iran.⁷

In response, Iran attacked a U.S. military base in Qatar.⁸ In the recent past (October 2023), Iran has arrested journalists and charged them with “collaborating with the 'hostile American government,' colluding against national security, and spreading propaganda against the regime[.]”⁹

Before the June 22 attacks, the U.S. Department of State issued a red level Travel Advisory for Iran, which states, in part: “Do not travel to Iran for any reason. U.S. citizens in Iran face serious dangers. They have been kidnapped and wrongfully arrested. Some have been held for years on false charges, subjected to psychological torture, and even sentenced to death.”¹⁰

After the June attacks, the situation is likely to be much worse. Iran will likely not distinguish between U.S. citizens and persons, including petitioner, who are not U.S. citizens but who have had long residence in the United States. Petitioner's situation is made even more dangerous because of his conversion to Christianity. In Iran, this is considered apostasy and is punishable by death.¹¹

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7 See NYT, “Israel and Iran Trade New Rounds of Attacks – Residents in central Tehran said they could see and hear heavy strikes, while Israel said it was defending itself from an attack. Earlier, President Trump suggested that a new government could take over in Tehran” (June 22, 2025).

8 See NYT, “What to Know About the U.S. Strike on Iran and the Israel-Iran Cease-Fire – A shaky truce between Israel and Iran, announced after U.S. attacks on Iranian nuclear sites, appeared to be holding.” (June 24, 2025).

9 U.S. Dept of State, 2023 International Human Rights Report for Iran (published in 2024), at pages 36-37.

10 Iran Travel Advisory (March 31, 2025).

11 U.S. Dept of State, 2023 International Religious Freedom Report for Iran (publish in 2024), at page 1.

IV. Due process requires an opportunity to file the motion to reopen.

The foregoing is only an outline of the motion to reopen which respondent intends to present to the BIA. There are detailed requirements for filing a motion to reopen, which include presentation of a new asylum application and a detailed explanation of the changed country conditions. See 8 CFR § 1003.2(c)(2).

The asylum application is done on agency form I-589, which is 8 pages long, and which usually must be supported by extensive declarations of the applicant and any available material witnesses, and supported by a full documentary presentation showing the likelihood of persecution. The instructions to form I-589 are themselves 12 pages long and highly technical

This takes time to prepare and time to adjudicate. Petitioner is asking that the court grant him an order barring removal during the time it takes to prepare and file a motion to reopen, and for BIA to adjudicate the motion.

Due process under the Fifth Amendment requires that petitioner be allowed this time to file such a motion, particularly because the triggering event for the changed circumstances occurred only on June 22, of this year.

Otherwise, the right to file a motion to reopen will become meaningless. Due process requires respondents to allow sufficient time for a motion to reopen to be presented to them.

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V. This court has jurisdiction.

Respondents cite *Diaz-Amezcua v. Johnson*, No. C14-1313 MJP, 2015 WL 419029, at *3 (W.D. Wash. Jan. 30, 2015) for the proposition that under 8 U.S.C. § 1252(g)), this court lacks jurisdiction over this petition.

In *Diaz-Amezcua v. Barr*, 402 F.Supp.3d 963 (W.D. Wash. 2019) (“*Diaz-Amezcua I*”).¹² In *Diaz-Amezcua II*, the petitioner raised similar arguments to those made by the petitioner in this case related to the need for an opportunity to present a motion to reopen. The court in *Diaz-Amezcua II* found that 8 USC § 1252(g) deprived the court of jurisdiction, but went further and held that “that Section 1252(g) as applied to the facts of this case, as they are currently known, violates the Suspension Clause of the U.S. Constitution.” *Diaz-Amezcua II* further stated:

[T]he Court finds that under the facts as alleged, Petitioner does not have an adequate alternative to habeas. Here, Petitioner has asserted—with supporting documentation—that he will be unable to litigate this motion to reopen upon returning to his country due to the dangerous conditions he faces in Mexico. See R&R at 12-16. A number of district courts have recently concluded that under such conditions, administrative remedies do not provide a constitutionally adequate alternative to habeas. See, e.g., *Compere v. Nielsen*, 358 F. Supp. 3d 170, 173, 179 (D.N.H. 2019) (where petitioner would be unable to litigate a motion to reopen if removed, Section 1252(g) violates the Suspension Clause); *Sied v. Nielsen*, No. 17-06785, 2018 WL 1142202, at *25 (N.D. Cal. Mar. 2, 2018) (pursuing a motion to reopen “is not a constitutionally adequate substitute process in the facts of this case, where the government can

¹² Respondents cite what appears to be an earlier decision in the same case, *Diaz-Amezcua v. Johnson*, No. C14-1313 MJP, 2015 WL 419029, at *3 (W.D. Wash. Jan. 30, 2015) (“*Diaz-Amezcua I*.”)

manipulate the process by deporting Mr. Sied before he can be heard, to a country where he may be tortured or killed.").

The same applies here. At this stage of the case, there is no adequate remedy outside of habeas, and the Suspension Clause creates jurisdiction in this court.

VI. Standards for temporary relief.

Typically, for a TRO the moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that a balance of equities tips in the favor of the moving party; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

In this case there appears to be a reasonable possibility that BIA would grant the motion to reopen based on changed country condition.. The removal of the petitioner appears to be imminent. The balance of hardships is markedly in the petitioner's favor, as he and his family, all U.S. citizens, except for his mother, who has received a grant of asylum, will suffer an irreparable loss if petitioner is removed from the United States. The public interest favors a careful consideration of this matter.

VII. Conclusion.

For the above reasons, the court should issue a temporary restraining order barring petitioner's removal from the United States for a reasonable time to allow him to file a

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motion to reopen with the BIA, and for the time which BIA may take to adjudicate such motion.

Respectfully submitted this 8th day of July 2025

/s/ Michael T. Purcell

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