IN THE UNITED STATES DISTRCT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RESUL CAN,
A[redacted]

Petitioner,

v.

MCSHANE et al.,

Respondents.

Case No.: 2:26-cv-00135

MOTION TO ENFORCE WRIT OF HABEAS CORPUS

1. Petitioner RESUL CAN is in the physical custody of Respondents at Moshannon Detention Facility.

2. Petitioner continues to face unlawful detention *even after his application for permanent residence was granted*, because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

3. Petitioner seeks immediate release at this time.

4. Petitioner is a native and citizen from Turkey was paroled into the United States on or about June 4, 2022, pursuant to § 212(d)(5)(A), valid for one year. Individuals who are "paroled" under INA § 212(d)(5)(A) are eligible to meet the threshold requirement of having been "inspected and admitted or paroled" under INA § 245(a).

5. The Interim Notice Authorizing Parole permitted him to file for lawful permanent resident status (green card) through marriage while remaining in the United States.

6. Petitioner married a United States citizen, Melanie Kenza Elokbani, on September 13, 2025, and filed for a green card based on marriage on December 23, 2025.

7. Petitioner then received a request to report to ICE in Philadelphia, PA on January

7, 2026, for a Credible Fear Interview, and was then detained.

8. Petitioner then sought relief from this court and filed a Habeas Petition on January 9, 2026.

9. This court ordered that DHS conduct a bond hearing and ordered that Petitioner should have the ability to appeal that bond decision to the Board of Immigration Appeals if the bond was denied.

10. Immigration Judge Dennis Ryan scheduled Petitioner's first bond hearing for Friday, January 19, 2026, at 1:30 PM. However, due to an emergency security lockdown in the Elizabeth Immigration Court building located at 625 Evans St Room #148A, Elizabeth, NJ 07201, Petitioner's hearing was cancelled, and continued to January 20, 2026, at 1:00 PM.

11. On January 20, 2026, Immigration Judge Ryan determined that Petitioner was a flight risk, despite evidence on the contrary. Petitioner has no criminal contacts, is married to a United States citizen with a pending "green card" application.

12. On February 19, 2026, the Board of Immigration Appeals rejected Petitioner's appeal based on jurisdiction, despite this court's order to permit Petitioner to appeal to the BIA should his bond be denied.

13. In March 2026, USCIS granted the I-130 Petition for Alien Relative, which means that DHS/USCIS believe that the relationship between Petitioner and his wife is *bona fide*.

14. On April 7, 2026, the Immigration Court held Petitioner's final merits hearing, where an Immigration Judge **GRANTED** Petitioners I-485 Application for Permanent Residence, which means that Petitioner will be a Lawful Permanent Resident. *See Exhibit A*.

15. At the merits hearing, DHS reserved appeal, and DHS will not release Petitioner at this time. DHS has thirty days from the date of the decision to appeal the decision to the Board of Immigration Appeals. The immigration judge's decision is not final until the 30 day deadline for

the appeal has passed, and DHS does not appeal.

16. An Immigration Judge found that Petitioner was paroled at the border, and Petitioner was eligible for a permanent resident status as an immediate relative because he is married to a United States citizen.

17. Petitioner and his wife have complied with every request for documents and required appearances from USCIS, ICE and DHS.

18. In any other year, this would have been a straightforward green card process for this young couple.

19. There is no justification for Petitioner to remain in custody, other than for punitive measures, which are not permitted in civil detention.

20. We kindly request Petitioners immediate release.

Date: April 8, 2026

s/Mary Chicorelli

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2026, I filed the forgoing Motion to Enforce *via* the Court's Case Management/Electronic Case Filing System, thereby making it available for viewing and download by all parties to the case.

Date: April 8, 2026

s/Mary Chicorelli

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Exhibit “A”

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT

Respondent Name:
RESUL, CAN

To:
Akalan, Yasin
490 Route 304
Suite 3
New City, NY 10956

[redacted]
Riders:
In Removal Proceedings
Initiated by the Department of Homeland Security
Date:
04/07/2026

ORDER OF THE IMMIGRATION JUDGE

☑ This is a summary of the oral decision entered on 04/07/2026. The oral decision in this case is the official opinion, and the immigration court issued this summary for the convenience of the parties.
☐ Both parties waived the issuance of a formal oral decision in this proceeding.

I. Removability

The immigration court found Respondent ☑ removable ☐ inadmissible under the following Section(s) of the Immigration and Nationality Act (INA or Act): 212 (a) (7) (A) (i) (I)

The immigration court found Respondent ☐ not removable ☐ not inadmissible under the following Section(s) of the Act:

II. Applications for Relief

Respondent's application for:

A. Asylum/Withholding/Convention Against Torture

☑ Asylum was ☐ granted ☐ denied ☐ withdrawn with prejudice ☑ withdrawn without prejudice

☑ Withholding of Removal under INA § 241(b)(3) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☑ withdrawn without prejudice

☑ Withholding of Removal under the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn with prejudice ☑ withdrawn without prejudice

☐ Deferral of Removal under the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Respondent knowingly filed a frivolous application for asylum after notice of the consequences. *See* INA § 208(d)(6); 8 C.F.R. §1208.20

B. Cancellation of Removal

☐ Cancellation of Removal for Lawful Permanent Residents under INA § 240A(a) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Cancellation of Removal for Nonpermanent Residents under INA § 240A(b)(1) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Special Rule Cancellation of Removal under INA § 240A(b)(2) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

C. Waiver

☐ A waiver under INA § was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

D. Adjustment of Status

☑ Adjustment of Status under INA § 245 was ☑ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

E. Other

III. Voluntary Departure

☐ Respondent's application for ☐ pre-conclusion voluntary departure under INA § 240B(a) ☐ post-conclusion voluntary departure under INA § 240B(b) was ☐ denied.

☐ Respondent's application for ☐ pre-conclusion voluntary departure under INA § 240B(a) ☐ post-conclusion voluntary departure under INA § 240B(b) was ☐ granted, and Respondent is ordered to depart by . The respondent must post a $ bond with DHS within five business days of this order. Failure to post the bond as required or to depart by the required date will result in an alternate order of removal to taking effect immediately.

☐ The respondent is subject to the following conditions to ensure his or her timely departure from the United States:

☐ Further information regarding voluntary departure has been added to the record.

☐ Respondent was advised of the limitation on discretionary relief, the consequences for failure to depart as ordered, the bond posting requirements, and the consequences of filing a post-order motion to reopen or reconsider:

If Respondent fails to voluntarily depart within the time specified or any extensions granted by the DHS, Respondent shall be subject to a civil monetary penalty as provided by relevant statute, regulation, and policy. *See* INA § 240B(d)(1). The immigration court has set

☐ the presumptive civil monetary penalty amount of $3,000.00 USD

☐ $ USD instead of the presumptive amount.

If Respondent fails to voluntarily depart within the time specified, the alternate order of removal shall automatically take effect, and Respondent shall be ineligible, for a period of

10 years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act, to include cancellation of removal, adjustment of status, registry, or change of nonimmigrant status. *Id.* If Respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of such a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply.

If Respondent appeals this decision, Respondent must provide to the Board of Immigration Appeals (Board), within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if Respondent does not submit timely proof to the Board that the voluntary departure bond has been posted.

In the case of conversion to a removal order where the alternate order of removal immediately takes effect, where Respondent willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. See INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).

IV. Removal

☐ Respondent was ordered removed to

☐ In the alternative, Respondent was ordered removed to

☐ Respondent was advised of the penalties for failure to depart pursuant to the removal order:

> If Respondent is subject to a final order of removal and willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. See INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).

V. Other

☐ Proceedings were ☐ dismissed ☐ terminated with prejudice
☐ terminated without prejudice ☐ administratively closed.

☐ Respondent's status was rescinded under INA § 246.

☐ Other:



Immigration Judge: HOOVER, FORREST 04/07/2026

Appeal: Department of Homeland Security: ☐ waived ☐ reserved
Respondent: ☐ waived ☑ reserved

Appeal Due: 05/07/2026

Certificate of Service

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To: [ ] Alien | [ ] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : RESUL, CAN | A-Number : [redacted]

Riders:

Date: 04/07/2026 By: HOOVER, FORREST, Immigration Judge