UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
(Houston Division)

ROSHAN AKBAR MOMIN,

Petitioner,

v. CASE NO. 4:17-CV-0568

DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants.

MOTION FOR A TEMPORARY RESTRAINING ORDER (TRO) RELEASING THE PETITIONER FROM DETENTION TO PERMIT HER TO OBTAIN CRITICAL MEDICAL TREATMENT

BEFORE THE HONORABLE **NANCY F. ATLAS**, SENIOR JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS:

I. INTRODUCTION

The Petitioner, Mrs. Roshan Akbar Momin, has been detained by the Department of Homeland Security since October 2016, pending exclusion hearings initiated in 1994. Mrs. Momin urgently requires surgical removal of a breast tumor which may be cancerous. She seeks immediate release in order to obtain surgery and follow-up treatment, pending this Court's hearing on her Petition for a Writ of Habeas Corpus.

This Court held a hearing on February 22, 2017 in order to determine the course of events in the case. A second hearing has been scheduled for Tuesday, Feb. 28, for further discussion of the issues in this case. Should the petitioner be released and the issues surrounding her detention be resolved prior to the February 28 hearing, the instant motion for a TRO would be moot. However, if Mrs. Momin remains in detention following the February 28 hearing, she respectfully urges the Court to conduct a hearing and to rule on this motion in the interests of Mrs. Momin's urgent need for critical medical treatment and follow up care.

Mrs. Momin has a three-centimeter lump—about the size of an egg yolk—in her breast. Three doctors—her family physician, a breast care specialist and an oncologist—urged *four months ago* that it be surgically removed "**as soon as possible**" due to the suspicious results of imaging studies (emphasis from the oncologist's Nov. 4, 2016, letter). The possibility that the lump is malignant, and the certainty that it is very painful, make it urgent that she receive treatment from her team of medical providers, and support from her family and medical providers during her period of recovery. Perhaps more alarmingly, Mrs. Momin has not been examined by her doctors during the four months of her detention, so the current state of her medical condition is unknown. The possibility that her condition has deteriorated is real.

Immigration and Customs Enforcement (ICE) refuses to release Mrs. Momin. ICE further has refused, twice, to escort her to appointments with her oncologist and her surgeon.

ICE has claimed that it has the ability to treat her "medical condition" while she is in custody, but as ICE has refused to release her in-custody medical records. There is no indication that ICE has correctly diagnosed her condition or determined appropriate treatment or that it has the resources to deliver necessary and appropriate care. The sole treatment offered to Mrs. Momin so far by ICE appears to have been Tylenol.

Mrs. Momin has no criminal record, is no threat to national security, and has been living peacefully in Texas for 23 years, raising her two U.S. citizen sons. Her continued detention is a deprivation of her liberty, and possibly of her life, in violation of her constitutional right to due process of law.

Mrs. Momin respectfully requests a temporary restraining order barring her continued detention pending the outcome of her civil case, a Petition for a Writ of Habeas Corpus.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Mrs. Momin is a native and citizen of Pakistan. On or about December 23, 1993, Mrs. Momin flew to the United States, arriving at Chicago's O'Hare airport. She presented to the immigration inspector a passport containing a U.S. visitor's visa. The immigration inspector apparently determined that the visa was counterfeit. Mrs. Momin was paroled into the United States, and issued a notice to appear for an exclusion hearing at a time and place "to be determined."

On February 17, 1994, the Immigration Court in Houston issued a Notice of Hearing in Immigration Proceeding to determine if Mrs. Momin was excludable from the United States. The notice was misaddressed, and returned to the judge as undeliverable.

Nonetheless, the hearing was held, Mrs. Momin was ordered excluded *in absentia*. The order of exclusion was mailed to her, and it, too, was returned as undeliverable.

Over the next 22 years, Mrs. Momin lived in Texas with her husband; they had two sons; she worked as a cashier; she and her husband paid taxes; and the family bought a modest home in a good neighborhood. She committed no crimes, and in no way became either a threat to others or to the national security.

Mrs. Momin has twice sought to normalize her immigration status. In 2004, she applied for lawful permanent resident (LPR) status derivative of her husband's application, which was based on an employer's petition. The Department of Homeland Security (DHS) held both applications for seven years, finally denying them in 2011 because the employer who had petitioned for her husband had gone out of business. During those many years, DHS did not inform Mrs. Momin of the outstanding order of exclusion.

In 2016, Mrs. Momin's eldest son Asim Momin, who had turned twenty-one years old, filed a Petition for an Alien Relative in behalf of his mother, and Mrs. Momin, filed a second application for legal permanent residence. Mr. Asim Momin's petition was approved. However, on September 29, 2016, Mrs. Momin received notice that she was an alien in "removal proceedings." Though the terminology (i.e., removal) was incorrect, this was the first time Mrs. Momin could have been aware that exclusion proceedings had been held, and that an order of exclusion had been issued. The family sought to resolve this matter through their first immigration lawyer.

Mrs. Momin was arrested at her home shortly after being advised that a suspicious mass in her breast should be surgically removed. She had seen her family physician and been referred to a breast care clinic, which conducted imaging studies and a biopsy. The director of the clinic, a breast cancer specialist, concluded that the mass was "highly suggestive of malignancy" and urged her to have it surgically removed. Mrs. Momin received a second opinion from an oncologist —four months ago — who concurred that the mass be removed "**as soon as possible**" (his emphasis).

She was taken into custody before she could obtain surgery, and has been detained for four months. The mass continues to grow, and has become increasingly painful, according to reports she has made to her family.

Mrs. Momin filed a motion to reopen her exclusion proceedings with the immigration judge, arguing that her right to due process was violated when, in 1994, the immigration judge ordered her excluded *in absentia* despite having knowledge that Mrs. Momin had not received the notice of the hearing. This motion was granted, her exclusion hearing reopened, and the outstanding order of exclusion and deportation was vacated.

ICE was notified that she could no longer be held as an alien subject to a final order of exclusion, and in four separate letters, her attorneys requested that she be released and placed on parole.

ICE refused to consider two of the letters, on the grounds that they were from Mrs. Momin's second attorney (i.e., the undersigned counsel), and refused to release her. ICE concluded that she is "a flight risk as she has absconded from her exclusion order for

more than 20 years" in direct contravention of the Immigration Judge's factual conclusion that Mrs. Momin did not know of the existence of the exclusion order until 2016. ICE did not conduct any sort of inquiry as to whether she is a flight risk, danger to society, or threat to national security, or evaluate the factors required by regulation to be considered when making a parole determination.

Mrs. Momin remains in ICE detention.

III. ARGUMENT

A. Standard for Granting Temporary Relief

To obtain a temporary restraining order, the Petitioner must establish (1) a likelihood of success on the merits; (2) that irreparable harm is likely in the absence of preliminary relief; (3) that the balance of equities tips in the petitioner's favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.* 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1).

Several circuits, including the Fifth Circuit, apply a "sliding scale" to the first and second factors to be established: "How strong a claim on the merits is enough depends on the balance of harms: the more net harm an injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting some preliminary relief." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1133 (9th Cir. 2011) (quoting *Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009)); *accord Canal Authority of Florida v. Callaway,* 489 F.2d 567 (5th Cir. 1974) ("Although a showing that plaintiff will be more severely prejudiced by a denial of the injunction than defendant would be by its grant does not remove the need to show some

probability of winning on the merits, it does lower the standard that must be met." (quoting Wright & Miller, Federal Practice and Procedure: Civil § 2948)).

B. The Petitioner will suffer irreparable harm if she is not released from custody due to her serious medical condition

1. The burden on Mrs. Momin of denial of this TRO cannot be understated: she urgently and critically requires surgery and post-operative treatment

Mrs. Momin urgently and critically requires further medical examinations and surgery to remove a suspicious mass in her left breast which her physician, a breast cancer specialist, concludes is "highly suggestive of malignancy." Her oncologist, Dr. Amirali Popatia, said "[I] recommend a surgical evaluation and an excisional biopsy **as soon as possible** to rule out malignancy and further management" (emphasis Dr. Popatia's).

Mrs. Momin was taken into ICE custody subsequent to receiving this instruction, but before she could schedule surgery. She has been detained since October. ICE has been informed of Mrs. Momin's medical condition, and her need for immediate surgery, multiple times, in letters from Mrs. Momin's attorneys and her husband, in increasingly urgent terms. Despite this, there is no indication that ICE has accurately assessed her actual medical condition and her medical needs.

In his January 19, 2017, letter declining to release Mrs. Momin, ICE Field Office Director and Defendant Patrick Contreras asserted that "Mrs. Momin's medical condition is treatable by DHS medical staff and she has refused treatment." He did not identify either the "medical condition" he understands her to be suffering from, nor the

"treatment" allegedly offered to her. Despite being asked, Defendant Contreras has refused to release her in-custody medical records, which would permit Mrs. Momin's attorneys and physicians to determine if the private detention facility holding Mrs. Momin had accurately determined her condition and is capable of providing the appropriate treatment. Release of these records is required by ICE detention standards, however ICE has not replied to the undersigned attorney's February 13 request for them.

Mrs. Momin explained to her husband that, due to her limited understanding of English, particularly medical terminology, and the lack of a qualified Gujarati interpreter at the detention center, she does not know if medical treatment was offered (and if so, what that treatment might have been), only that she was asked to sign a form waiving her right to be treated. The only "treatment" she has received is Tylenol.

It is abundantly clear that ICE has denied her access to appropriate, i.e. surgical, treatment. Defendant Contreras has refused to provide an escort for Mrs. Momin to appear at two appointments—one with her oncologist on February 16, and one with her surgeon on February 22. Mrs. Momin's attorney requested an escort to each of these appointments on February 10—ample time for ICE to arrange for her transport. ICE did not even respond to these requests.

The longer Mrs. Momin goes without medical attention, the worse her prognosis. Breast cancer is eminently survivable with swift action; according to the American Cancer Society, nearly 100% of individuals who catch and treat tumors early will survive them. If left untreated, however, malignant tumors spread to other tissues, making the condition much harder to treat: the survival rate of breast cancer drops to 22% after

metastasis.[1] Lack of treatment, then, risks transforming what should be a limited period of detention into a death sentence.

This Court should issue a TRO requiring ICE to release Mrs. Momin to her family so that she is able to obtain medical treatment as quickly as possible. **Over four months have passed since her medical team advised her to have the suspicious mass in her breast surgically removed as soon as possible**. Detaining Mrs. Momin any longer is cruel and inhumane, and a violation of her fundamental right to be free from restraint. In a worst case scenario, it is a violation of her right to life.

The stakes could not be higher here. Preventing Mrs. Momin from obtaining urgent surgical excision of the suspicious breast mass, with the hallmarks of breast cancer, places an incredible burden on her.

2. The burden on the Government is negligible, as neither of the two reasons for detaining an alien—flight risk or danger to society—are implicated in this case

By contrast, the burden on ICE should Mrs. Momin be released is nil. She is not a danger to society or a threat to national security. She has no criminal history or even a whisper of being dangerous. Quite the opposite: she is a housewife, raising two boys and tending the family home.

Mrs. Momin is also not a flight risk. Contrary to Defendant Contreras's assertion, she has not "absconded" from the 1994 order of exclusion. Until October 2016, she did

[1] The American Cancer Society, "Breast Cancer Survival Rates," available at https://www.cancer.org/cancer/breast-cancer/understanding-a-breast-cancer-diagnosis/breast-cancer-survival-rates.html ("The 5-year relative survival rate for women with stage 0 or stage I breast cancer is close to 100%..... Breast cancers that have spread to other parts of the body are more difficult to treat and tend to have a poorer outlook. Metastatic, or stage IV breast cancers, have a 5-year relative survival rate of about 22%.") (accessed 2/23/2017).

not know it existed, or even that an exclusion hearing was held, due to the immigration judge's office's failure to properly address two envelopes to her—information the government has known since 1994, as the two notices were returned to the court. She has not been living in the shadows, or hiding from the immigration authorities in any way. Quite the opposite: Mrs. Momin has applied for, and been granted, employment authorization since at least 2004. The agency did not even inform Mrs. Momin of this order during the seven-year period while her application to adjust her status was pending.

Mrs. Momin's parents live in Houston. Her father is a U.S. citizen and her mother a legal permanent resident intending to naturalize when her English is sufficiently proficient. Mrs. Momin and her husband live in the home they purchased in 2011, with their two sons — Asim, who is in college, and Sanif, who is high school. They could not be more stable.

Mrs. Momin's 2016 application for LPR status is pending, and she has filed a second application with the agency as well. She is highly likely to be granted this status, and requires only a waiver for her use of a counterfeit visa in her 1993 entry—a waiver regularly granted by the agency.

In summary, Mrs. Momin is very likely to be granted lawful permanent residence, and thus has everything to lose, and nothing to gain, by failing to appear before the agency. She is so stable, and her roots in the Houston community so deep, that it is virtually inconceivable that she would "abscond" from the exclusion proceedings currently pending. ICE's interest in having her appear at a future exclusion hearing is not at risk by releasing her from detention.

Should she be released from detention, ICE's burden would decrease, as the cost of detaining Mrs. Momin at the CCA facility in Houston which has custody of her is significant. Estimates of the daily cost of detaining an alien range from $127 to $161.[2] A conservative estimate of the cost of Mrs. Momin's detention to the United States is over $15,000 so far. Escorting her to physician appointments or providing the medical care her own team would otherwise provide will increase that cost significantly, particularly if her condition has worsened in the intervening four months.

3. The balance of the burdens unquestionably favors the release of Mrs. Momin

The Fifth Circuit's standard for granting a TRO requires balancing these two burdens, asking if the "plaintiff will be more severely prejudiced by a denial of the injunction than defendant would be by its grant." There is no question that Mrs. Momin will be more prejudiced if the TRO is denied, and that this imbalance is heavily weighted against ICE.

C. The Petitioner is likely to prevail on the merits.

Mrs. Momin challenges her detention on two grounds: it violates her substantive due process rights, and it violates her procedural due process rights. Each of these arguments is well grounded in law, and well supported by the facts of her case.

The Due Process Clause proclaims that "no person" shall be "deprived of life, liberty, or property, without due process of law." U.S. CONST. AMEND. 5. The Due Process Clause's broad language has been held to protect aliens who have entered the

[2] Department of Homeland Security, "Budget-in-Brief Fiscal Year 2017," p. 38, available at https://www.dhs.gov/sites/default/files/publications/FY2017BIB.pdf.

United States in exclusion hearings. The Supreme Court has stated that although arriving aliens are not afforded the same due process rights as citizens, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001). "[O]nce an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action. *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982). "It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States*, 463 U.S. 354, 361 (1983), (internal quotation marks omitted). The federal courts have always been careful not to "minimize the importance and fundamental nature" of the individual's right to liberty. *United States v. Salerno*, 481 U.S. 739, 750 (1987).

I. Mrs. Momin's substantive due process rights are violated by her continued detention despite a potentially fatal and rapidly progressing medical condition, while being denied life-saving medical treatment.

"So-called 'substantive due process' prevents the government from engaging in conduct that 'shocks the conscience' or interferes with rights 'implicit in the concept of ordered liberty.'" *Salerno*, 481 U.S. at 746. All individuals are entitled to "humane conditions of confinement," which means, among other things, that "prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care." *Farmer v.*

Brennan, 511 U.S. 825, 832 (1994). This is true of immigration detainees as well as citizens. *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000).

Refusing to provide treatment for a serious medical condition violates this minimal standard of humane conditions of confinement. *Domino v. Tex. Dep't of Crim. Justice*, 239 F.3d 752, 756 (5th Cir. 2001) ("the plaintiff must show that the officials 'refused to treat him, ignored his complaints,…or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs.'") (quoting *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985)).

Mrs. Momin has been diagnosed with a breast tumor that is "highly suggestive of malignancy." At least two separate physicians have urged her to remove the tumor without delay. Breast cancer is eminently survivable with swift action; 98.8% of individuals who catch and treat tumors early will survive them. If left untreated, however, malignant tumors spread to other tissues, making the condition much harder to treat: the survival rate of breast cancer drops to 26.3% after metastasis. Lack of treatment, then, "is objectively and sufficiently serious such that the act or omission results in the denial of 'the minimal civilized measure of life's necessities'"—indeed, it risks transforming what should be a limited period of detention into a death sentence. *Farmer*, 511 U.S. at 834.

Respondents have responded to this threat with deliberate indifference. Defendant Contreras has known of the urgency of Mrs. Momin's condition since November as Mrs. Momin's legal counsel has provided him with great detail since. Mrs. Momin has also informed prison staff that her tumor is growing and becoming increasingly painful. To date, the prison has responded by offering her Tylenol. Apparently Defendants believe

this is all that is required, as the January 19 denial states only that "her medical condition is treatable by DHS medical staff and she has refused treatment."

Mrs. Momin should have little trouble demonstrating that ICE's deliberate indifference to her medical situation violates her rights of substantive due process.

2. Mrs. Momin's detention is also procedurally unconstitutional, as the agency has violated the laws and regulations governing discretion.

"When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. This requirement has traditionally been referred to as 'procedural' due process." *Salerno*, 481 U.S. at 746.

Here, Mrs. Momin does challenge the agency's failure to follow the procedures set out by law. The detention decision (1) applies the wrong body of law; (2) ignores the factors that should have governed the determination; (3) goes against agency precedent and policy; and (4) impermissibly contravenes the IJ's findings.

First, Defendant Contreras's letter does not directly address the issue of what law authorizes Mrs. Momin's detention: 1993 or present, pre- or post-order. He appears to assume that the current law applies, as the letter cites the current regulatory provisions for parole. However, arguably her case is actually governed by the law as it was in 1993. IIRIRA itself provides that its permanent provisions apply only to removal proceedings commenced after its enactment, IIRIRA § 309(c)(1), and the Fifth Circuit has applied it accordingly. *Enriquez-Gutierrez v. Holder*, 612 F.3d 400, 408 (5th Cir. 2010). This error is significant, as it results in ICE applying the wrong presumptions and balance of factors.

Second, the applicable 1993 regulation contains specific instructions as to which factors the district director should consider when determining whether or not aliens will be paroled out of detention. 8 C.F.R. § 212.5(a) (1993). Defendant Contreras's denial letter did consider each of these factors, which include aliens who have serious medical conditions and aliens whose close relatives have filed a qualifying visa petition on behalf of the detainee, both of which argue for release of Mrs. Momin.

Even if current law did apply, Defendant Contreras's denial decision glosses over the provisions of the current law. He wrote, "in order to be considered for parole, aliens must establish that they are described in one or more of the five categories set forth in section 212.5(b) of Title 8 of the Code of Federal Regulations (C.F.R.)…." The very first of these categories is "Aliens who have serious medical conditions in which continued detention would not be appropriate." 8 C.F.R. § 212.5(b). Defendant Contreras's letter does not meaningfully engage with this factor.

Texas district courts have found that immigration decisions predicated on erroneous interpretations of the law result in fundamental unfairness. *United States v. Girosky-Garibay*, 176 F. Supp. 2d 705 (W.D. Tex. 2001); *United States v. Ojeda-Escobar*, 218 F. Supp. 2d 839 (W.D. Tex. 2002). And the Fifth Circuit has held the "question of whether the IJ properly applied the law to the facts in determining the alien's eligibility for discretionary relief" or applied the wrong standard or improperly considered evidence "are legal and constitutional issues unrelated to the discretion reserved to the Attorney General." *De Rodriguez v. Holder*, 585 F.3d 227, 233-34 (5th Cir. 2009).

Third, defendant Contreras's decision also directly violates the policy for the detention and removal of aliens, both as it controlled in 1993 and as it controls today. In 1993, the agency's position on parole of excludable aliens was that "an alien, whom the Service in its discretion has arrested and taken into custody, generally should not be detained or required to post bond pending a determination of deportability except on a finding that he is a threat to the national security or is a poor bail risk." *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976) (cited by *Matter of Ellis*, 20 I. & N. Dec. 641 (1993) and *Reno v. Flores*, 507 U.S. 292, 295 (1993)). And today's Department policy is outlined in a November 20, 2014, Memorandum issued by then-Secretary of Homeland Security, Jeh Johnson. Under this Department policy, an alien in Mrs. Momin's position does not warrant any level of priority. It directs field office directors to remove non-priority aliens only if removing such an alien "would serve an important federal interest," and to authorize the use of DHS detention resources only in "extraordinary circumstances" on such aliens if they are "primary caretakers of children" or their detention "is otherwise not in the public interest."

Despite being reminded of this Memo by Mrs. Momin's attorneys, Defendant Contreras did not refer to the Memo, and thus did not say how Mrs. Momin's circumstance is "extraordinary," how her removal "would serve an important federal interest," or on what grounds he elected to disregard the clearly stated priorities of the Department.

Finally, the decision directly contravenes the binding finding of the IJ in Mrs. Momin's exclusion case. In rescinding the 1993 exclusion order, the IJ noted that the

agency had mailed its undeliverable notices to Mrs. Momin at a different address than the one it had originally listed her as residing at on the I-122, and concluded that Mrs. Momin "established reasonable cause for her absence from the proceedings." Defendant Contreras's letter contravenes this finding, which is binding on the immigration proceedings. The detention decision is predicated in large part on the assertion that "Mrs. Momin poses a flight risk as she has absconded from her exclusion order for more than 20 years." This "turns a blind eye" to the IJ's order that she had no notice of the opinion, as it would seem not logically possible to abscond from an order one does not have any idea was issued.

Furthermore, Defendant Contreras declined to evaluate the full record. His letter referred to a "comprehensive review of her A-file," but Defendant Contreras did not consider evidence submitted by Mrs. Momin's second attorney; he considered only the requests from Mrs. Momin's first attorney.

3. *This Court is the appropriate forum for granting relief from Respondents' unconstitutional detention of Mrs. Momin.*

Under the controlling regulation at 8 C.F.R. § 1003.19(h)(2)(i)(A), the immigration judge presiding over her exclusion hearing does not have jurisdiction to hold a bond hearing. Thus, apart from requests to ICE officials, there is no possibility of exhausting claims before the agency. *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899 (S.D. Tex. 2007) ("The BIA lacks the authority to rule on the issue Garza complains of, and therefore the exhaustion of administrative remedies in this case will not speak to or resolve the issues involved in this case.").

In the absence of agency remedies for this unconstitutional detention, the appropriate venue for review and relief is the District Court. The Supreme Court has made clear that federal district courts retain "habeas jurisdiction under § 2241" to evaluate aliens' claims of constitutional deprivation. *INS v. St. Cyr*, 533 U.S. 289, 293, 313-14 (2001).

Mrs. Momin is highly likely to prevail on the merits in this case on either or both of the grounds argued, and this Court is the appropriate venue for seeking relief.

D. The balance of equities and public interest sharply favor preliminary relief for the petitioner.

The third factor the Petitioner must address is the balance of "the competing claims of injury and…the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24. As this case involves the government, this balance of equities factor merges with the fourth factor, public interest. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Mrs. Momin's equities are clear: she is a long-standing resident of the United States, an alien with no criminal record, deep ties to her community, and a strong case for being granted lawful permanent resident status. Her interest in release is significant: the ability to obtain urgently needed surgery and follow-up treatment, a return to her husband and sons, and conditions better suited for consultation with her attorney during the two processes she faces: exclusion hearings on the one hand, and an application for permanent residence on the other.

The government has minimal, if any, interest in her continued detention. Mrs. Momin is not subject to an order of exclusion or deportation, so the government cannot have any interest in her prompt removal; when Defendant Contreras's erroneous factual conclusion is removed from consideration, it is apparent that she is not a flight risk so the government's interest in her appearance in future proceedings is not at risk; she is not a threat to society or to national security so the government's interest in the security of society is also not at risk.

To the contrary, the government's interest is in important ways aligned with Mrs. Momin's: there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm. Thus by granting her release, the government permits her to address these two legal processes and, as is appropriate, avoid deportation to Pakistan—a country she has not seen for decades, and which is war torn, economically and socially backwards and unstable.

Moreoever, it is most emphatically the government's interest that is advanced by not denying critical health care to a woman who may be facing a fatal condition. As breast cancer progresses, the survival rate drops precipitously — from nearly 100% for women with pre-cancerous lesions, to only 22% for women whose breast cancer has spread to other parts of the body. Mrs. Momin has a team of providers ready and capable of providing her the surgical, recovery, and follow-up treatment she requires.

IV. PRAYER FOR RELIEF

The Petitioner has established each the four *Winter* factors: (1) a likelihood of success on the merits; (2) that irreparable harm is likely in the absence of preliminary relief; (3) that the balance of equities tips in the petitioner's favor; and (4) that an injunction is in the public interest. *Winter,* 555 U.S. at 20. These four factors individually and combined argue for her release: It is in Mrs. Momin's *and* the Government's best interests that she be released, and there are no grounds for her to be detained.

Based on the foregoing, Mrs. Momin respectfully seeks a temporary restraining order requiring her release from detention so that she may obtain critically needed medical treatment. An Order requiring her release from ICE detention should issue, pending this Court's decision on her Petition for a Writ of Habeas Corpus.

Dated: February 23, 2017,

Respectfully Submitted,

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