

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

F.I.C.G.,

Petitioner,

v.

KRISTI NOEM et al.,

Respondents.

Civil Action No. 1:25-cv-00079

**RESPONDENTS' OPPOSITION
TO MOTION TO LIFT STAY**

This Court stayed proceedings in this case on July 28, 2025, pending the decision on appeal in *W.M.M. v. Trump*, No. 25-10534 at the Fifth Circuit. On September 2, 2025, the Fifth Circuit issued its opinion, and on September 22, 2025, the Government filed a petition for rehearing *en banc*. Respondents represent that this specific petitioner is detained pursuant to the Alien Enemies Act (“AEA”) and thus, he is a putative class member of *W.M.M., et al., v. Trump, et al.*, Case No. 25-59, which remains pending before the Fifth Circuit given the Government’s pending petition for rehearing. As such, Respondents oppose lifting the stay pending the outcome of *W.M.M.*

Respondents seek rehearing on the merits of whether this Court can review the President’s determination that TdA has perpetrated, attempted, or threatened an invasion and predatory incursion and whether upon review TdA’s actions meet that standard. In light of Respondent’s strong arguments on those questions in favor of rehearing, the balance of the equities weighs heavily in favor of keeping the stay in place; this Court’s judgment for this particular case would be affected by any decision of the Fifth Circuit or higher court. Although Petitioner remains detained, Petitioner will not be removed until the end of his habeas proceedings.

Petitioner argues that the immigration judge ordered Petitioner released on bond pursuant to Title 8, that he has been detained for 168 days, and that the Fifth

Circuit has determined that he cannot be detained under the AEA. But, where the lawfulness of his detention under the AEA remains a question for higher courts, and those courts remain actively engaged in the litigation, this Court should continue the stay of proceedings until the final mandate of the highest court.

For these reasons, Respondents ask that this Court continue to stay the proceedings in this case pending the Fifth Circuit's final adjudication of *W.M.M.*. Accordingly, this Court should deny the motion.

Respectfully Submitted,

YAAKOV M. ROTH

Principal Assistant Attorney General
Civil Division

DREW ENSIGN

Deputy Assistant Attorney General

JOHN BLAKELEY

Senior Counsel

s/ Nancy N. Safavi

NANCY N. SAFAVI

Senior Trial Attorney

TX Bar No. 24042342

Office of Immigration Litigation

Civil Division

U.S. Department of Justice

P.O. Box 878, Ben Franklin Station

Washington, DC 20044-0878

(202) 514-9875

Nancy.Safavi@usdoj.gov

Dated: September 23, 2025

Counsel for Respondents

Certificate of Service

I hereby certify that I served this document on September 23, 2025, by filing it with the Court's CM/ECF system, which will electronically deliver the document to counsel for all parties.

Dated: September 23, 2025

s/ Nancy N. Safavi
Counsel for Respondents