UNITED STATES COURT OF APPEALS
for the
FIRST CIRCUIT

Fabricio Ferreira Gomes, Petitioner, v. **Antone Moniz**, Superintendent, Plymouth County House of Correction, **Patricia Hyde**, Acting Director of Boston Field Office, U.S. Immigration and Customs Enforcement; **Kristi Noem**, Secretary of the U.S. Department of Homeland Security; Respondents.	Case No. 25-1211 **PLAINTIFF'S SECOND EMERGENCY MOTION FOR STAY OF REMOVAL**

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I. INTRODUCTION

Petitioner, Fabricio Ferreira Gomes (Mr. Ferreira Gomes), pursuant to Federal Rules of Appellate Procedure Rule 8 and Federal Rules of Civil Procedure Rule 62, moves this Court for an emergency stay of removal. Petitioner's Writ of Habeas Corpus and APA Claim was denied by this Court on February 28, 2025 and Petitioner subsequently filed a Notice of Appeal. Mr. Gomes sought an Emergency Stay of Removal with this Honorable Court on March 3, 2025, which was denied in a 2-1 decision. This Court concluded: "Because petitioner has not demonstrated that he is likely to succeed on the merits and, more generally, has failed to demonstrate that relief is in order, the motion is denied. See Nken v. Holder, 556 U.S. 418, 434 (2009) (discussing traditional stay/injunction factors); Respect Maine PAC v. McKee, 622 F.3d 13, 15 (1st Cir. 2010) (same)." See Order of Court, entered March 7, 2025. Due to recent Supreme Court precedent in Trump v. J.G.G., 604 U.S. _____ (2025), Petitioner submits this Second Emergency Motion for Stay on the basis that the Supreme Court has held that because petitioners' claims for relief "necessarily imply the invalidity of their confinement and removal, … their claims fall within the core of the writ of habeas corpus and thus must by brought in habeas." Id. at 2. Accordingly, jurisdiction to review Mr. Gomes' confinement and removal can be established in this cause of action.

The Supreme Court's recent ruling directly contradicts its prior precedent in DHS v. Thuraissigiam, 591 U.S. 103, 117 (2020), which Appellees expressly relied upon in their opposition. See Respondents' Opposition to Petitioner's Emergency Motion for Stay of Removal, filed March 5, 2025. To the extent that the Court in Thuraissigiam held "Claims so far outside the core of habeas may not be pursued through habeas," the Court's 2025 holding in Trump v. J.G.G. et al, invalidates the same.

Absent a stay of removal, Mr. Ferreira Gomes would face irreparable harm as faces imminent removal from the United States, despite having been the victim of a severe form of trafficking in persons in the United States and seeking a T Nonimmigrant Visa on the basis thereof.

This Motion is sought on an emergency basis given the Immigration and Customs Enforcement's keen interest in removing all noncitizens with final orders of removal without exception. Specifically, Respondents-Appellees have filed a Notice of Intent to Remove Mr. Ferreira Gomes no earlier than April 22, 2025. See Notice of Intent to Remove, filed April 15, 2025.

For the reasons stated herein, Mr. Ferreira Gomes merits a stay of removal from this Court.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner is a 47-year-old citizen of Brazil. He has two U.S. citizen daughters, aged 17 and 20, whom he has raised in this country. He has never been convicted of a crime in the United States or anywhere else.

In 2001, at the age of 23, Petitioner entered the United States without inspection and was encountered by the then-Immigration and Nationality Service and placed into removal proceedings via a Notice to Appear that did not contain a time or date of any future hearing.

He was released from custody on a bond. He did not receive the notice of hearing for his removal proceedings. His EOIR file reflects that the notice of hearing was returned to the court as undeliverable.

In 2013, Petitioner was detained by Immigration and Customs Enforcement, but released and placed on an Order of Supervision. He has complied with that Order of Supervision at all times for the past 12 years.

Petitioner has made various and ongoing efforts to address his immigration status in this country, including filing a motion to reopen his removal proceedings, appealing the denial of the motion to reopen his removal proceedings and filing a second motion to reopen his proceedings as the law regarding Notices to Appear lacking a date and time developed.

In 2024, Petitioner's immigration counsel identified that Petitioner had survived a severe form of labor trafficking, rendering him eligible to seek T nonimmigrant status pursuant to 8 U.S.C. §1101(a)(15)(T). On January 21, 2025, Petitioner (by and through counsel) filed a detailed report regarding his experiences of labor trafficking to the U.S. Department of Labor. On January 22, 2025, Petitioner (by and through counsel) filed a form I-914 Application for T Nonimmigrant Status alongside a form I-192 Application for Advance Permission to Enter as Nonimmigrant, requesting a waiver of all applicable admissibility grounds. These forms were filed at the USCIS Nebraska Service Center (Receipt Nos. LIN2515350923 and LIN2515350944). Receipt notices did not issue until March 20, 2025, despite numerous requests to obtain them by immigration counsel and through congressional liaison assistance from U.S. Representative Seth Moulton's office.

On February 4, 2025, immigration counsel for Petitioner emailed ICE as a routine check-in procedure. Counsel was instructed to have Petitioner appear in person at ICE's Boston Field Office, located in Burlington, Massachusetts, on February 12, 2025 "to be enrolled into [ICE]'s CART reporting terminal." Counsel requested a brief continuance to March 4, 2025 so that she could attend the appointment with Petitioner, given a conflict on the 12th and some work-related travel scheduled for later in the month. An ICE officer responded, "That's a month after his reporting date. He should come sooner." After further emails, it was agreed that Petitioner would check in on February 26, 2025.

On February 10, 2025, it came to Petitioner's counsel's attention that some individuals reporting in to enroll in ICE's "CART" system were in fact detained. On information and belief, two other noncitizens who reported for "CART" enrollment were taken into custody on February 10. This raises the inference that Petitioner was being called in for detention and removal.

After Petitioner filed the writ of habeas corpus and APA claim with this Honorable Court on February 25, 2025, Petitioner lawfully reported to the Boston Field Office of the Immigration and Customs Enforcement ("ICE"), as he was required to do on February 26, 2025, and as he had done for the past 12 years under an order of supervision. On February 26, 2025, Petitioner was detained by ICE immediately, and no attempt was made to register him in the CART reporting terminal.

Immediately within 15 minutes of presenting himself, he was taken to a back room where Officer Tahar Ahmed, Officer Joseph Amirault and Supervisor Alexander Durden proceeded to speak with him. Officer Ahmed asked if he was married, if he had children, and where he lived. Petitioner confirmed that he is married, that he has two USC daughters, aged 20 and 17 years old. He also confirmed his physical address. Counsel requested that he not be detained and offered to have Petitioner present himself weekly, as ICE demanded.

Counsel asked to speak with the Field Office Director, and initially the supervisor said that the Field Office Director was in meetings all morning, but Counsel could speak with an assistant Field Office Director. Shortly thereafter, the supervisor informed Counsel that nobody was available to speak to Counsel all day. Counsel then questioned whether the decision to detain a T Visa applicant had been discussed with the Office of the Principal Legal Advisor ("OPLA"). They stated that they had consulted with OPLA. Counsel asked whether the T Visa was considered, because it seemed as though the officers were not aware that a T Visa had been

pending. The Supervisor said that information was provided to them in the habeas petition and that it was their guidance, instruction, and policy to detain all individuals with final orders of removal without any exception.

III. REASONS FOR GRANTING A STAY

Adjudication of a motion for stay of removal requires that the Court consider four factors: (1) whether the stay applicant demonstrates a strong likelihood of success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies." Nken v. Holder, 556 U.S. 418, 434 (2009). In Mr. Ferreira Gomes' case, all four factors counsel granting a stay.

A. Petitioner is Likely to Succeed on the Merits

The first showing a stay petitioner must make is "a strong showing that he is likely to succeed on the merits." See Nken, 129 S.Ct. at 1760-61 (quoting Hilton, 481 U.S. at 776, 107 S. Ct. 2113) (quotation marks omitted). A stay may be issued upon "demonstrat[ion] [of] a substantial case on the merits," so long as the other factors support the stay. Hilton, 481 U.S. at 778, 107 S.Ct. 2113. With regard to the likelihood of success factor, Nken said only that "[i]t is not enough that the chance of success on the merits be 'better than negligible,' and that '[m]ore than a mere possibility of relief is required." 129 S.Ct. at 1761 (citations omitted).

The reasons for this Court's denial of Petitioner's first Motion for Stay appears to be based on the jurisdictional argument presented by the Government. Recently, the Supreme Court has made it clear that a writ of habeas corpus is a proper form of action to challenge removal. In Trump v. J.G.G. et al, the Supreme Court concluded that challenges to removal "must be brought in habeas." 604 U.S. _____, at 2 (2025). Indeed, the Court declared: "Regardless of whether the

detainees formally request release from confinement, because their claims for relief 'necessarily imply the invalidity' of their confinement and removal under the AEA, their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." Id. Here too, Mr. Ferreira Gomes' challenge to his detention seeks to invalidate the validity of his confinement and removal, pending the adjudication of his T visa application before USCIS. Therefore, given the new Supreme Court case, Petitioner is now likely to succeed on the merits of the application.

The Supreme Court's recent ruling directly contradicts its prior precedent in DHS v. Thuraissigiam, 591 U.S. 103, 117 (2020), which Appellees expressly relied upon in their opposition. See Respondents' Opposition to Petitioner's Emergency Motion for Stay of Removal, filed March 5, 2025. To the extent that the Court in Thuraissigiam held "Claims so far outside the core of habeas may not be pursued through habeas," the Court's 2025 holding in Trump v. J.G.G. et al, invalidates same. Here, Mr. Ferreira Gomes is challenging the validity of his confinement and removal while USCIS adjudicates his T Visa application. In this case, the officers that detained Petitioner clearly stated to Petitioner and Counsel present with Petitioner at the time of his detention that they lacked discretion to not detain Petitioner. Petitioner is challenging ICE's apparent blanket policy that it will remove all individuals with prior removal orders without consideration to the underlying fact and circumstances. Additionally, Petitioner is challenging the timing of the execution of his removal order, rather than the fact that ICE is choosing to execute it. ICE allotting the T visa adjudication (or at least the bona fide determination) to occur is very different than seeking to permanently impede removal and stay in the United States.

Petitioner's merely seeking to have his liberty right preserved and his T visa application can be adjudicated. The Petitioner in this case is challenging the execution (and policies and procedures exercised by ICE) of his removal order prior to the adjudication of his T visa

application. The Petitioner in this case is also seeking release from detention as well, as he is not subject to mandatory detention. His detention and removal are contrary to the liberty right that he has as a result of the T visa statute and regulations and Congress' intent when promulgating the T visa statute and DHS's publicly stated regulations and policies.

Furthermore, Petitioner has also challenged his detention in view of ICE's violations of the requirements under 8 C.F.R. § 241.4 by failing to provide Petitioner notice of the revocation of his relief and an opportunity for him to challenge the release. ICE violated its own policies by communicating with him outside the presence of his attorney, intimidating him by stating to him that they would face criminal consequences if he did not sign documents ICE requested him to sign, and questioning him about documentation related to his removal case without his attorney being present. Even if this Court were to find that Section 1252(g) applies, the suspension clause would preserve jurisdiction over these claims.

B. Absent a Stay of Removal, Petitioner Faces Irreparable Harm

Along with the likelihood of success on the merits, the irreparable injury inquiry is one of "the most critical" factors in adjudicating stay applications. Nken, 556 U.S. at 433. Absent a stay of removal, Petitioner will suffer irreparable harm for two main reasons. First, if deported, Petitioner's pending I-914 Application for T Nonimmigrant Status is pretermitted by operation of law, foreclosing the only viable form of relief that he has at the present. Second, deportation would adversely affect Petitioner and his family, including his wife and his two United States Citizen children, who are dependent upon Petitioner for financial and emotional support.

i. Forced deportation will pretermit Petitioner's pending I-914 Application for T Nonimmigrant Status, which requires applicants to be physically present in the United States on account of trafficking.

Petitioner's removal from the United States would render Petitioner's I-914 Application for T nonimmigrant status pretermitted by operation of law as he would not be able to satisfy the physical presence requirement in the statute. The Trafficking Victims Protection Act provides that survivors of human trafficking in persons may be eligible for nonimmigrant status if the applicant:

> (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of title 22;
> (II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
> (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime here acts of trafficking are at least one central reason for the commission of that crime; (bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or (cc) has not attained 18 years of age; and
> (IV) the alien 2 would suffer extreme hardship involving unusual and severe harm upon removal.

INA §101(a)(15)(T). In fact, the District Court for the District of Washington has acknowledged that T visa applicants have a liberty interest in preventing their removal and that if the petitioner were removed before his T visa was adjudicated, "he will be deprived of a viable defense to removability, … as physical presence in the United States is a condition of eligibility, his T Visa cannot be granted once he is removed." See Fatty v. Nielson, 2018 WL 3491278 (W.D. July 20, 2018). Unlike other immigration petitions where an applicant's continuous presence is not a requirement for approval, the T Visa cannot be granted once the applicant is removed from the United States. Here too Mr. Ferreira Gomes has a liberty interest in obtaining a meaningful determination on his T Visa application and in preventing his removal. If Respondent were to be removed from the United States prior to the final adjudication of his T visa application, he will no longer be able to satisfy the physical presence requirements.

ii. Forced deportation would adversely affect Petitioner by separating him from his family

The specific facts of Petitioner's case demonstrate that Petitioner would suffer irreparable injury if forced to separate from his family here in the United States. Fabricio entered the United States in 2001 at only 23 years old and has remained here in the United States ever since. Since his arrival, he married his wife, Flavia Dorgal Gomes, and the couple have two U.S. Citizen children, Ayla de Souza Gomes (DOB: August 5, 2004) and Agatha de Souza Gomes (DOB: October 28, 2007). Ayla currently attends Wentworth University in Massachusetts, and Petitioner and his wife are able to help her pay her tuition; their younger daughter is 17 and looking at colleges now. Additionally, Petitioner has started his own business to support his family. Due to Petitioner's victimization and the devastating financial consequences thereof, Petitioner and his wife made the difficult decision to send their daughters to Brazil while he recovered financially. They have since improved their economic conditions and their daughters returned to live with them in the United States. They have been able to work on recovering as a family from the trauma of being separated due to Fabricio's trafficking. Now, Fabricio has been in the United States for more than 20 years and has no ties that he could utilize if he had to return to Brazil; his wife also has not lived in Brazil in more than two decades, and similarly has no professional connections to Brazil. Removal from the United States would result in irreparable harm to Petitioner and Petitioner's family, who are already familiar with, and have suffered from, separation from one another.

For these reasons, the unique and substantial harms that the Petitioner will suffer if removed to Brazil is qualitatively different from the harm that a petitioner would ordinarily suffer. Thus, Petitioner has shown that irreparable injury is the more probable or likely outcome.

C. The Issuance of a Stay Will Not Substantially Injure the Government, and the Public Interest Lies in Granting Petitioner's Request for a Stay of Removal

Finally, the Court must weigh the irreparable harm to Petitioners against the harm to the Government and must determine whether a preliminary injunction would be in the public interest. See Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc., 645 F.3d 26, 32 (1st Cir. 2011). The Court found in Nken that the last two stay factors, injury to the other parties in the litigation and the public interest, merge in immigration cases because Respondent is both the opposing litigant and the public interest representative. Nken, 556 U.S. at 435. Additionally, there is public interest in the "prompt execution of removal orders," which is heightened where the noncitizen "is particularly dangerous." Id. Moreover, the Nken Court also recognized the "public interest in preventing [noncitizens] from being wrongfully removed," which must weigh heavily in the Court's consideration. See Nken. 556 U.S. at 436. Here, neither these factors, nor any other factors, exist to suggest that the Respondent or the public have any interest in Petitioner's removal beyond the general interest noted in Nken.

i. Neither the Government nor the public will be injured.

Petitioner is a 47-year-old native and citizen of Brazil with a viable form of relief available to him, strong family ties in the United States, and no criminal convictions. The Government will not be injured because there are significant options by which to release him with conditions such as GPS monitoring, more frequent check-ins, and all other means employed by the agency. Petitioner is not a flight risk as he has complied with all check-ins under his Order of Supervision for the last 12 years. He is seeking an affirmative form of relief with USCIS as the victim of a severe form of trafficking in persons. He has never missed an appointment with ICE or violated his Order of Supervision in any way. Additionally, he is the main provider for his wife and his two United States Citizen children. He is willing to comply with alternatives to detention such as more frequent check-ins, or GPS monitoring.

Furthermore, to the extent that the Government sought to argue that it will suffer injury in not executing a removal order, it has failed to effectuate this removal order for more than 20 years. In fact, the Government was given the opportunity to effectuate this removal order in 2013, but instead elected to release him on an Order of Supervision. In fact, this Court has found that: "A brief delay in unlawful deportation of residents who have lived here with Government permission for over a decade outweighs the public interest in prompt execution of removal orders, where Petitioners have been law-abiding and pose no threat to public safety." Devitri v. Cronen, 289 F.Supp.3d 287, 297 (1st Cir. 2018). There, petitioners were a group of Indonesian nationals who had been released from ICE custody on orders of supervision pursuant to Operation Indonesian Surrender, some for more than a decade, who sought a preliminary injunction to stay their removal while they sought motions to reopen when the program was terminated. Id. at 290. This Court, in granting the preliminary injunction, found that delays of their imminent removals did not pose harm to the Government. Here too, Mr. Ferreira Gomes' requested brief delay – to allow for adjudication of his T Visa application, does not pose harm to the government. He has been in full compliance with his Order of Supervision since 2013 and has no criminal convictions. He has been law-abiding and poses no threat to public safety.

The public interest lies in releasing Petitioner, as removing victims of human trafficking will have a chilling effect on the investigation and prosecution of trafficking within the United States. Congress' intention with the TVPRA was to "combat trafficking in persons by ensuring just and effective punishment of traffickers and by protecting the victims of trafficking in persons." The congressional intent in providing protection to immigrant survivors of trafficking within the US was to compel victims to come forward, as their reluctance to cooperate with law enforcement drastically impacted the government's ability to combat human trafficking. Moreover, the public

interest lies in the protection afforded to victims who bravely choose to come forward and identify as survivors and cooperate with the investigation thereof.

Respondent, accordingly, cannot make any particularized showing that granting Petitioner a stay of removal would substantially injure its interests or conflict with the public interest in preventing a wrongful removal.

IV. CONCLUSION

For these reasons, the Court should grant this motion for a stay of removal.

Respectfully submitted,

Dated: April 17, 2025

By: */s/ Annelise M. J. de Araujo*

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), I certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 3,616 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

/s/ Annelise M. J. de Araujo

Annelise M. J. de Araujo,
for Petitioner, Fabricio Ferreira Gomes

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2025, I caused the foregoing Petitioner's Second Emergency Motion to Stay Order of Removal to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the Court's Appellate Case Management System (ACMS). I certify that all participants in the case are registered CM/ECF users and that service will be accompanied by the appellate CM/ECF system.

/s/ Annelise M. J. de Araujo

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