IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

MARIO HERNANDEZ ESCALANTE,	§	
	§	
Petitioner,	§	
	§	
v.	§	
	§	Civil Action No. 9:25-cv-182-MJT
KRISTI NOEM, TODD M. LYONS, NIKITA BAKER,	§	
	§	
	§	
Respondents.	§	

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

Respondents, by and through undersigned counsel, hereby submit the following response in opposition to Petitioner's Motion for Preliminary Injunction, ECF No. 32 (the "Motion").

BACKGROUND

I. Petitioner's factual background.

Petitioner has been detained by U.S. Immigration and Customs Enforcement ("ICE") for the purpose of effectuating this reinstated final order of removal. Petitioner is a native and a citizen of El Salvador who first entered the United States on an unknown date at an unknown location in Texas without being inspected or paroled by an immigration officer. In or about September 1998, Petitioner applied for asylum. His petition was denied. On or about March 18, 1999, an immigration judge ("IJ"), following removal proceedings, ordered Petitioner to be removed from the United States to El Salvador. On May 13, 2025, Petitioner applied for temporary protected status. That petition was denied. On October 6. 2006, Petitioner was apprehended by ICE and processed as a fugitive alien. On March 26, 2007, Petitioner was removed, for the second time, to El Salvador.

Undeterred by two prior removals, Petitioner again impermissibly entered the United States. ICE apprehended Petitioner on January 16, 2010. Petitioner's final order of removal was reinstated, and he was removed to El Salvador on February 11, 2011.

Continuing to disregard immigration laws, Petitioner again illegally reentered the United States. ICE apprehended him on Augst 10, 2018. His prior order of removal was reinstated. This time, however, Petitioner claimed a reasonable fear of being returned to El Salvador. On December 12, 2019, an IJ ordered the Petitioner removed from the United States but granted deferral of removal under the regulations implementing the Convention Against Torture[1] as to El Salvador. On February 14, 2020, Petitioner was released from detention and placed on supervised release with ICE.

On June 3, 2025, ICE arrested Petitioner when he appeared for his scheduled check in. Petitioner is currently in ICS custody at the ICE facility in Livingston, Texas. On June 18, 2025 Respondents served Petitioner with a Notice of Removal indicating the intent to remove him to Mexico.

II. Petitioner's Criminal History

Petitioner has an extensive criminal history. On April 19, 2006, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 12 months imposed with 11 months suspended. On August 4, 2010, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 12 months imposed with 10 months and 20 days suspended. On June 14, 2018, Petitioner was found guilty of felony simple assault on a law enforcement officer in violation of Virginia law and sentenced to three years imposed with two years and six months suspended. On September 14, 2018, Petitioner was convicted in the United States District Court for

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[1] The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.17 (2025); 8 C.F.R. § 1208.18(a) (2020).

the Eastern District of Virginia of illegal entry after removal in violation of federal law for which he was sentenced to 12 months. On February 17, 2022, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 30 days. On March 24, 2022, Petitioner was convicted of violation of probation in violation of Virginia law and was sentenced to two years and six months.

LEGAL STANDARD

I. Legal standard for motions for preliminary injunction.

The standard for obtaining injunctive relief is a familiar one. The movant bears the burden of establishing a substantial likelihood of success on the merits of his claims, a substantial threat of irreparable harm, that the balance of hardships weights in his factor, and that the issuance of the relief would not be a disservice to the public. *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 Fl.3d 570, 574 (5th Cir. 2012). However, in cases such as this, where the government is the nonmovant, the balance of hardships and lack of public disservice factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Guedes v. Bureau of Alcohol, Tobaccos, Firearms & Explosives*, 920 F.3d 1, 10 (D.C. Cir. 2019) (per curiam).

The standard has teeth and is not easily met. The Fifth Circuit has "cautioned repeatedly" that a preliminary injunction is an "extraordinary remedy." *Tex. Med.*., 667 F.3d at 574. For this reason, the Fifth Circuit has made clear that relief should be treated "as the exception rather than the rule." *Miss. Power & Light v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1976). Such relief is "particularly disfavored" and should only issue when "the facts and law clearly favor the moving party." *Id.* The party seeking injunctive relief, not the Respondent, bears the burden of proof seeking a preliminary injunction as well as the burden of persuasion as to all four elements required for a preliminary injunction. *See Canal Auth. Of the State of Florida v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974) (holding the district court erred in shifting the burden to the defendant because "[u]nder the proper view of the law, it should not have been incumbent upon defendants to prove by a preponderance of the evidence, much less to a probable environmental or ecological certainty, that the interests they represent would suffer irreparable harm. The burden of persuasion on all four requirements for a preliminary inunction is at all times upon the plaintiff."). Therefore, without such a showing as to all four elements, the preliminary relief cannot issue. *See, e.g. Ponce v. Sorcorro Indep. Sch. Dist.*, 508 F.3d 765, 772 (5th Cir. 2007).

II. Legal framework governing removal of aliens, who have received final orders of removal to third countries.

The Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered removed are in fact removed from the United States. This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b). Of course, under the statute and regulations implementing the Convention Against Torture ("CAT"), the United States will not remove any alien to a country where he is likely to be tortured—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by the hand or with the consent of the public official.

ARGUMENT

Though the Petitioner failed to seek preliminary injunctive relief prior to the Court issuing a report and recommendation regarding the underlying Petition for Writ of Habeas Corpus, ECF No. 31, (the "Report and Recommendation") Petitioner now seeks to enjoin Respondents from transferring him outside of the Eastern District of Texas, removing him from the United States, "without honoring the necessary process and otherwise preclude Respondent's [*sic*] from attempting to Coerce [him] into giving up any of these protections." ECF No. 9, at 9. Curiously, the Motion presents a vastly different view of Petitioner's situation than he presented in proceedings on the

Petition. In support of the Petition, Petitioner argued that he was not likely to be removed soon. *See generally* ECF No. 1. In fact, Petitioner went so far as to concede that "[h]e is not likely to be imminently removed." *Id.* ¶ 4. But now, Petitioner has apparently had a change of heart and believes that, absent injunctive relief, there is an imminent threat of removal to Mexico, which necessitates the extraordinary remedy sought in the Motion. *See generally* ECF No. 32. Of course, Petitioner cannot have it both ways and tellingly, the Petition is not verified, and the Motion is not supported by a declaration or affidavit of any kind that could establish the allegations upon which the Motion relies. This is especially true given the inflammatory allegations that Respondents have attempted to pressure him to sign paperwork and gone so far as to threaten to with physical violence if he did not sign paperwork allowing his removal from the United States. *See, e.g.,* ECF No. 32, at 3. The lack of supporting evidence renders Petitioner's claimed irreparable harm, at best, speculative. Moreover, as set forth in the Declaration of Supervisory Detention and Deportation Officer (SDDO) Briggs, and contrary to Petitioner's unfounded concerns, Respondents are appropriately addressing his claim of a reasonable fear of removal to Mexico. Because he is receiving the appropriate process, there will be no irreparable harm without injunctive relief.

Petitioner has not carried his burden of proof and persuasion as to all elements necessary to obtain injunctive relief and the Motion should be denied.

I. Plaintiff fails to carry his burden of proof because the Motion is not supported by anything other than arguments by counsel.

Plaintiff fails to carry his burden of proof and persuasion with respect to the Motion. As discussed, the movant bears the burden of proof and persuasion as to all elements of a request for preliminary injunctive relief. *Canal Auth. Of the State of Florida*, 489 F.2d at 573. Although not entirely clear, it appears Petitioner's request for injunctive relief is based on his argument that absent injunctive relief, he is at risk from "Respondents' continued violation of the regulations and coercive pressure to accept removal to a country he fears." ECF No. 32, at 2. But Petitioner fails to offer any proof of the "coercive pressure" other than argument by counsel, which is not sufficient evidence to satisfy his burden of proof. It is also contrary to the facts. Petitioner has requested an interview to evaluate the reasonableness of his claim of fear of being removed to Mexico. *Id.* at 3 (citing ECF No. 11-1, at 3). Respondents have the process of evaluating that claim. *See* Declaration of SDDO Briggs, *attached hereto as* Exhibit "A", ¶ 9. Thus, contrary to being coerced to accept removal to Mexico, Petitioner is actively engaged in a process that effectively challenges that determination. And as set forth in SDDO Briggs' Declaration, that process is ongoing, and Petitioner will not be removed to Mexico during that process. *Id.* Petitioner has failed to carry his burden with respect to his argument of coercive pressure. Given that the coercive pressure appears to be the sole basis of the Motion

II. Petitioner is not likely to succeed on the merits because the Court lacks jurisdiction to interfere with Petitioner's removal from the United States.

Section 1252(g) strips this Court of jurisdiction to interfere with ICE's effectuation of his final order of removal. Respondents recognize that the Court previously rejected the Respondents' argument that 8 U.S.C. § 1252(g). ECF No. 31, at 5–6. Respectfully, Respondents believe that issue was wrongly decided and are considering objecting to the Report and Recommendation on, among other things, that basis. But the Report and Recommendation also evaluated the jurisdictional question in a different context. There, "[i]t [was] not disputed that the court does not have jurisdiction over the Petitioner's actual removal proceedings." *Id.* at 6. But the Court found that "Petitioner [was] not asking [the] court to prevent his removal to a third country, but instead to release him from detention and put him back on supervised release...." *Id.* The Motion presents a different context. Here, Petitioner is seeking to prevent Respondents from effectuating his final order of removal. *See* ECF No. 32, at 9. As such, Section 1252(g) applies and precludes the Court from granting the relief sought in the Motion.

At its core, the Motion asks the Court to preclude ICE from effecting his final order of removal. In that regard, the Court lacks jurisdiction to provide such relief as 8 U.S.C. § 1252(g) precludes a district court from staying orders of removal. Section 1252(g) states that "no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by [ICE] to . . . *execute removal orders against any alien*." (emphasis added). This provision applies "notwithstanding any other provision of law (statutory or non-statutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title." *Id.* Section 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon [certain categories of] prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999). Indeed, Petitioner's requested relief, an injunction preventing transfer from outside the Eastern District of Texas or removal from the United States absent restrictions imposed by the Court, would necessarily impose a judicial constraint on immigration authorities' decision to execute the removal order, contrary to the purpose of § 1252(g)." *Viana v. President of United States*, No. 18-cv-222-LM, 2018 WL 1587474, at *2 (D.N.H. Apr. 2, 2018), *aff'd sub nom. Viana v. Trump*, No. 18-1276, 2018 WL 11450369 (1st Cir. June 18, 2018); *Rosales v. Bureau of Immigration & Customs Enforcement*, 426 F.3d 733, 736 (5th Cir. 2005) (explaining that when Congress passed the Real ID Act in May 2025, the statute "divested federal [district] courts of jurisdiction over § 2241 [habeas] petitions attacking removal orders.") (citations omitted); *Idokogi v. Ashcroft*, 66 F. App'x. 526, *1 (5th Cir. 2003) ("The relief sought by Idokogi in the district court is connected 'directly and immediately' with the Attorney General's decision to commence removal proceedings against him. The district court therefore correctly determined that it lacked jurisdiction to stay the order of removal.") (internal citations omitted); *Cardoso v. Reno*, 216 F.3d 512, 517 (5th Cir. 2000) ("Because this challenge is tantamount to a challenge to the execution of a removal order, section 1252(g) bars courts from exercising jurisdiction."); *Fabuluje v. Immigration and Naturalization Agency*, 244 F.3d 133, 133 (5th Cir. 2000) (unpublished); *Mapoy v. Carroll*, 185 F.3d 224 (4th Cir. 1999).

Mapoy is instructive. There, the petitioner filed a habeas petition pursuant to 28 U.S.C. § 2241 and sought a preliminary injunction staying his removal while he attempted to reopen proceedings before the Board of Immigration Appeals ("BIA") and adjust his status based on his marriage to a United States citizen. *Mapoy*, 185 F.3d at 225–26. The Fourth Circuit reversed the lower court's order granting an injunction, holding that "Congress could have hardly been more clear and unequivocal that courts shall not have subject matter jurisdiction over claims arising from the actions of the Attorney General enumerated in § 1252(g) other than jurisdiction that is specifically provided by § 1252." *Id.* at 230. The Court further noted that Section 1252(b) provided the only avenue for review, but even then, limited the review from the BIA to the courts of appeal. *Id.*; *Nasrallah v. Barr*, 590 U.S. 573, 579 (2020) (noting how, with the passage of the REAL ID Act of 2005, Section 1252(b) was amended to funnel all "issues arising from a final order of removal" to the immigration courts with "direct review in the courts of appeals," and thereby "eliminating review in the district courts"). In sum, the statutory scheme here forecloses any habeas review under section 2241 in district courts which seeks to stay the execution of a removal order. *Id.*; *see also Fernandez v. Keisler*, 502 F.3d 337, 346 (4th Cir. 2007) (holding that the provision of the INA channeling judicial review through courts of appeal "expressly eliminate[s] district courts' habeas jurisdiction over removal orders"); *Loera Arellano v. Barr*, 785 Fed. Appx. 195 (4th Cir. 2019) (affirming dismissal of habeas action seeking stay of removal); *Futeryan-Cohen v. U.S. Immigration & Naturalization Svc.*, 34 Fed. Appx. 143, 145 (4th Cir. 2002) (reversing district court's grant of habeas relief to stay order of deportation and ordering dismissal).

This statutory scheme is directly applicable to Petitioner's case because it restricts the availability of judicial review of removal orders by expressly precluding habeas corpus jurisdiction and channeling review of such orders to the courts of appeal as "the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5). The statute provides that review of all questions "arising from any action taken or proceeding brought to remove an alien" shall be available only through a petition for review in the appropriate court of appeals. *Id.* § 1252(b)(9).

Petitioner's removal order was entered in 2019. Section 1252(g) strips the Court of jurisdiction to entertain Petitioner's challenge to the execution of that order by asking the Court to enjoin respondents from transferring him out of the Eastern District of Texas or out of the United States. As such, Petitioner is not likely to succeed on the merits and his request for injunctive relief and the Motion should be denied.

III. The Petitioner cannot establish he will be irreparably harmed without injunctive relief.

Petitioner fails to carry his burden of proof and persuasion as to irreparable harm. To establish irreparable harm, a party must show that the harm is certain and so imminent as to necessitate immediate equitable relief. "Speculative harm" or the mere "possibility of irreparable harm" is not enough. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001) ("Speculative injury is not sufficient, there must be more than an unfounded fear on the part of the applicant … A presently existing actual threat must be shown."; *See also Adams v. Cantwell*, Case no. 6:20-cv-11, 2022 WL 453544, at *2 (E.D. Tex. Jan. 10, 2022), *report and recommendation adopted*, 6:20-cv-11, 2022 WL 446756 (Feb. 12, 2022) (Kernodle, J.) ("To the extent that Plaintiff is expressing fear of future harm, the speculative nature of such claim does not satisfy the heightened burden necessary for the extraordinary relief of a preliminary injunction.").

Here, Petitioner has not established the type of irreparable harm necessary to justify the extraordinary relief he seeks. It is not entirely clear what irreparable harm Petitioner claims will result absent an injunction. Petitioner's first argument is that Respondents' purported efforts to "Coerce him into consenting to his removal to a country where he may be persecuted, tortured, and/or killed," establish "a clear irreparable harm[.]" ECF No. 32, at 6. But as explained *supra*, Petitioner has not provided any evidence supporting the allegations of coercion, which Respondents dispute has taken place. Therefore, Petitioner fails to satisfy his burden of proof and persuasion that, absent an injunction, he will suffer irreparable harm due to purported coerciion.

Petitioner also argues that "unlawful detention and potential deportation alone" establishes irreparable harm. But the case Petitioner relies on, *Beyhaqi v. Noem*, 4:25-cv-1788, 2025 WL 1196003 (S.D. Tex. Apr. 22, 2025), does not support this proposition. First, that case involved termination of SEVIS records and a revocation of F-1 status, not a third country removal. Additionally, the court's finding of irreparable harm in that case turned not merely on the risk of detention and deportation, which were merely speculative future possibilities, but on tangible consequences including "economic hardship [and] inability to continue his education program." *Beyhaqi*, 2025 WL 1196003, at *2. Unlike the allegation in this case, which are not supported by any evidence, the *Beyhaqi* Plaintiff provided supporting evidence including a letter from his assistant professor that established that as a result of his SEVIS termination "he is no longer authorized to be employed as a GAR or GAT at Texas A&M University." *Beyhaqi*, 4:25-cv-1788, ECF No. 1-1. Thus, unlike this case, the purported harm was not merely speculative.

Petitioner's failure to satisfy his burden of proof and persuasion on the issue of irreparable harm is sufficient basis to deny the Motion. But the Declaration of SDDO Briggs also establishes that Petitioner' concerns are unfounded. On June 18, 2025, Respondents informed Petitioner that ICE intended to remove him to Mexico. *See* Ex. A, SDDO Briggs Decl., ¶ 7. Following notification of Respondents' intention to remove him to Mexico, Petitioner made a claim that he had a reasonable fear of removal to Mexico. *Id.* ¶ 8. Petitioner's reasonable fear claim is being addressed by Respondents. *Id.* ¶ 9. That process is ongoing and Petitioner will not be removed to Mexico while that process unfolds. *Id.* Petitioner has additionally expressed an interest in being removed to Canada and has not claimed a reasonable fear of removal to Canada. *Id.* ¶ 8. Respondents are also going to pursue removal to Canada. *Id.* ¶ 10. In sum, an injunction is not necessary to prevent a speculative harm of removal to Mexico "without honoring the necessary process," because Respondents are engaged in that very process. Petitioner's mere speculation of a rogue agent shipping him off to Mexico in the middle of the night before the process plays out is the type of speculation that is insufficient to justify the extraordinary relief Petitioner seeks in this case, especially in light of SDDO Briggs' declaration.

IV. The third and fourth factors counsel against interfering with the Executive's authority to remove criminals illegally in the United States.

Because Petitioner seeks to enjoin the action of a government agency, the third factor in assessing whether injunctive relief is appropriate, the balance of equities, and the fourth factor, the public interest merge. *Nken*, 556 U.S. at 435. In this case, both factors weigh in favor of denying injunctive relief.

Any time a government's policy is blocked by court order, it suffers irreparable harm. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) ("[A]ny time a State is enjoined from effectuating statute enacted by representatives of its people, it suffers a form of irreparable injury.") (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. V. Orrin W. Foz Co.*, 434 U.S. 1245, 1351 (Rehnquist, Circuit Justice, in chamber)). That harm is more poignant in the immigration context where the Constitution assigns preeminent power to the political branches. *See Galvan v. Press*, 347 U.S. 522, 531 (1954).

What is more, Petitioner has not demonstrated that his interest will be served by the extraordinary remedy of injunctive relief. As explained *supra*, Petitioner has not provided more than speculation as to irreparable harm. Additionally, the Respondents are providing all process necessary to ensure his reasonable fear claim is considered prior to attempting to remove him to Mexico. Therefore, on balance, the third and fourth factors weigh against providing preliminary injunctive relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2025, I electronically filed the foregoing document with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of this filing.

/s/ James Gillingham
JAMES GILLINGHAM
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