

United States District Court
Western District of Texas
El Paso Division

Christopher Sambissa,
and Darla Palacio Sambissa,
Petitioners,

v.

Kristi Noem, in her official capacity as
Secretary, U.S. Department of Homeland
Security *et al*,
Respondents.

No. 3:25-CV-00237-DCG

**Response in Opposition to
Petitioner's Emergency Motion for Preliminary Injunction**

On or about July 24, 2025, Petitioner filed an Emergency Motion for Preliminary Injunction under Rule 65 of the Federal Rules of Civil Procedure, moving this Court to enjoin “any actions to remove” her husband from the United States until the Court issues a final judgment in these habeas proceedings. *See* ECF No. 14. For the sake of brevity and judicial efficiency, Respondents incorporate herein their prior arguments from their opposition to the pending habeas petition, including their supplemental response. *See* ECF Nos. 3, 15. Additionally, Respondents oppose this motion and provide the following in support of their opposition:

I. Relevant Facts and Procedural History

Petitioner claims in her motion that Mr. Sambissa is a native of the Democratic Republic of Congo. *See* ECF No. 14 at 2. The habeas petition, however, alleges that Mr. Sambissa is a “UK citizen.” *See* ECF No. 1 ¶ 12.¹ Petitioner subsequently clarifies in her most recent filing that Mr. Sambissa is “a UK citizen born in the Republic of Congo.” ECF No. 23 at 2. In any event, DHS

¹ The record citation in Respondents' initial habeas response at ECF No. 3 at 2 erroneously points to paragraph one of the petition to support this allegation, but the correct citation is paragraph twelve.

records confirm that Mr. Sambissa last entered the United States as a citizen of the United Kingdom via the Visa Waiver Program (“VWP”) as a visitor for pleasure, not as a Congolese citizen under a B1/B2 visitor visa. *See* ECF No. 15-1 (Digital Copy of Form I-94). Petitioner offers no evidence to rebut this.²

On or about June 23, 2025, Respondents notified Mr. Sambissa that he would be processed for removal under section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1187, for having overstayed the terms of his 2019 VWP entry. ECF No. 3-1 at 4–5. The notice further warned that Mr. Sambissa is “prohibited from entering, attempting to enter, or being in the United States” for ten years from the date of his departure under this VWP removal. *Id.*

Petitioner alleges that she married Mr. Sambissa, and in March 2025, he filed benefit applications with United States Citizenship and Immigration Services (USCIS) based on his marriage to a United States citizen. ECF No. 14 at 2. Petitioner claims that the application “is currently pending adjudication” and that Mr. Sambissa was apprehended “while his petition for lawful permanent residency was undergoing the established administrative and legal review by USCIS.” *Id.*

Petitioner subsequently concedes that the application Mr. Sambissa had apparently attempted to file was rejected. *See* ECF No. 23 at 3, 5. Petitioner nonetheless argues that the application was “pending” at the time of Mr. Sambissa’s apprehension, but the Rejection Notices

² For the first time in this proceeding, rather than contesting Mr. Sambissa’s entry via VWP in 2019 as shown in DHS records, Petitioner instead argues in her Reply brief that Mr. Sambissa did not knowingly or voluntarily waive his right to judicial review under the VWP. *See* ECF No. 23 at 3–4. Not only is this claim precluded for not having been raised in the habeas petition itself, or even in the motion for preliminary injunction, but it is also not justiciable in district court as a matter of law. *See* 8 U.S.C. § 1252(a)(2)(D) (funneling review of constitutional claims or questions of law only through the circuit court of appeals via petition for review); *Lavery v. Barr*, 943 F.3d 272, 277 (5th Cir. 2019); *McCarthy*, 555 F.3d at 460 n.5.

for both his Forms I-485 and I-130, each dated July 1, 2025, inform the applicant and/or the Petitioner that the rejected benefit request was never “considered properly filed.” *Id.* at 15–16.

II. Legal Standards

This case falls squarely within *McCarthy v. Mukasey*, 555 F.3d 459, 460 (5th Cir. 2009), which held that a UK citizen who overstayed the VWP was not entitled to any due process rights beyond an asylum hearing, regardless of whether she had filed an application for adjustment of status prior to her detention. Under *McCarthy*, this Court should not only deny this motion for preliminary injunction, but also the habeas petition in its entirety.

A preliminary injunction is an “extraordinary and drastic remedy.” *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is “not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion.” *Black Fire Fighters Ass’n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). “The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has “clearly” carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

III. Argument

As a threshold issue, this Court lacks jurisdiction³ to enjoin the execution of a final order of removal. 8 U.S.C. § 1252(f)(1), (g); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550–51 (2022); *see also Westley v. Harper*, No. 25–229, 2025 WL 592788 at *4–6 (E.D. La. Feb. 24, 2025) (denying preliminary injunction and dismissing case for lack of jurisdiction where district court lacked jurisdiction to stay removal); *El Gamal, et al, v. Noem, et al*, No. 25-CV-664-OLG, ECF No. 29 at 2 (W.D. Tex. July 2, 2025). Moreover, there is no jurisdiction to direct Respondents to commence removal proceedings against him under 8 U.S.C. § 1229a via the issuance of a Notice to Appear (NTA). 8 U.S.C. § 1252(g).

³ In her most recent filing, Petitioner argues that Mr. Sambissa’s transfer from ICE detention in El Paso, Texas, to Torrance, New Mexico, deprives this Court of jurisdiction. ECF No. 23 at 2; ECF No. 10. ICE lawfully transferred Mr. Sambissa on or about July 3, 2025, while his habeas petition was pending but prior to filing a response. *See* ECF No. 3 at 3-4. Nothing precluded ICE from transferring Mr. Sambissa, as this Court had not enjoined his transfer. As such, nothing precludes this Court from maintaining jurisdiction over any otherwise cognizable habeas claims:

By filing her immigration habeas petition while being detained within the territorial confines of the United States District Courts for the Western District of Texas and naming the warden at her detention facility, Petitioner “properly complied with habeas procedure.” *See Griffin v. Ebbert*, 751 F.3d 288, 290 (5th Cir. 2014) (citing *Padilla*, 542 U.S. at 434-35). Moreover, “[j]urisdiction attached on that initial filing for habeas corpus relief, and it was not destroyed by the transfer of petitioner and accompanying custodial change.” *Id.* Although the transfer “may have given both courts concurrent jurisdiction, it did not destroy the power of th[is] District court to rule in [t]his case.” *McClure v. Hopper*, 577 F.2d 938, 940 (5th Cir. 1978). With respect to typical habeas relief, “the question becomes one of the appropriateness of the forum,” not mootness. *Id.*

Ndudzi v. Castro, No. SA-20-CV-0492-JKP, 2020 WL 3317107, at *8 (W.D. Tex. June 18, 2020). To the extent Petitioner wishes to challenge the conditions of Mr. Sambissa’s current confinement, she must do so in the District of New Mexico, as any such claim is moot upon transfer to a different facility, and venue for a new such claim is proper only where the alien is detained. *Id.*

Even if she could overcome these jurisdictional hurdles, which she cannot, Petitioner is unlikely to succeed on the merits of her habeas petition. Mr. Sambissa has been in detention for less than sixty days with a final order of removal under INA § 217. His detention is lawful by statute and not unconstitutionally prolonged.

Moreover, Mr. Sambissa is not entitled to the substantive due process rights that Petitioner purports he would lose should this Court deny this motion for preliminary injunction. *See* ECF No. 14 at 5 (listing five “irreparable harms” Mr. Sambissa would suffer if removed during his habeas proceedings). As a VWP entrant and overstay, Mr. Sambissa waived his right to (1) obtain judicial review of a removal order; (2) pursue relief from removal beyond a fear claim; and (3) receive any due process protections beyond what the statute provides him. *See* ECF No. 3 at 1-3, 6-9. In other words, Petitioner has not shown that Mr. Sambissa is entitled to the issuance of an NTA, judicial review of his order of removal, the right to remain in the United States without lawful status, or the right to lawfully return to the United States within ten years of the execution of this removal order, despite his marriage to a United States citizen. *See id.*

Similarly, Petitioner cannot show a procedural due process violation here. While an agency is required to follow its own procedural regulations, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). The record shows that ICE timely served Mr. Sambissa with written notice of the allegations and the charges against him due to his VWP overstay. *See* ECF No. 3 at 4-6. Although Mr. Sambissa refused to sign or otherwise respond to the allegations against him, ICE nonetheless notified him of his right to contest the allegations and charges against him. *Id.* In a subsequent filing, however, Petitioner alleges “Mr. Sambissa faces challenges in reading and writing English, complicating his ability to navigate the legal system effectively.”

ECF No. 23 at 2–3. In addition to language barriers, Mr. Sambissa allegedly suffers from “cognitive deficits that hinder his capacity to process and understand information presented to him,” which Petitioner argues makes Mr. Sambissa “unable to advocate for himself.” *Id.*⁴

Even if Petitioner were successful in showing some form of procedural due process violation in this case, the remedy for such a violation is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990). For these reasons, Petitioner is unlikely to prevail on the procedural due process claim, or it would not result in Mr. Sambissa's release from custody or a stay of his removal order.

Finally, with respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner has a final order of removal that entitles the government to detain him unless and until Petitioner shows good cause that his removal is unlikely; and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws and the removal of aliens with final removal orders.

⁴ This “lack of capacity” to comprehend certain things due to “cognitive deficiency” is seemingly contradicted by publicly available social media posts, published by someone who appears to be Mr. Sambissa as recently as June 2025. *Compare* ECF No. 23 at 2–4 with Christopher Sambissa (@krizacharisma) • Threads, Say more (last accessed Aug. 7, 2025) and Christopher Sambissa | How would they feel? #better #imagine #explore #fitness #fitnessmotivation #selflove #selfcare #selfimprovement #fit #gym #abs | Instagram (last accessed Aug. 7, 2025).

IV. Conclusion

This Court lacks jurisdiction to provide Petitioner the relief she seeks in her preliminary injunction motion. Moreover, Petitioner is not likely to succeed on the merits of the habeas claims. This motion should be denied.

Respectfully submitted,

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Certificate of Service

I certify that on August 7, 2025, I caused a copy of this filing to be mailed to Petitioners
(*pro se*) at the following address:

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PRO SE

Darla Palacio Sambissa



PRO SE

**Courtesy copy also sent by email to Mrs. Sambissa, by request.*

/s/ Lacy L. McAndrew
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