UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEOVIGILDO HERNANDEZ LOPEZ, Petitioner, v. SAM OLSON, in his official capacity as Chicago Field Office Director for U.S. Immigration and Customs Enforcement, *et al.*, Respondents.	)	No. 25 C 10145 Judge Alonso

RESPONDENTS' MEMORANDUM IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

This is a habeas case where petitioner, Leovigildo Hernandez-Lopez (a native and citizen of Mexico), seeks immediate release and a stay of his imminent deportation despite having been ordered removed from the United States nearly a decade ago. *See* Respondents' Exhibit 1. He now petitions for such relief because he currently has a Form I-918 Supplement A, Petitioner for Qualifying Family Member of U-1 Recipient (hereinafter, "derivative U visa petition") pending before U.S. Citizenship and Immigration Services ("USCIS"). *See* Dkt. 1 ("Pet.") at ¶ 15 (requesting "that the court . . . order[ ] the Respondents to not remove the Petitioner from the Jurisdiction of the United States . . . while Respondent awaits a bona fide determination from USCIS on this petition"). But the central problem with that claim for relief is how this court has no jurisdiction to interfere with the Executive Branch's discretion as to when to execute Hernandez-Lopez's final order of removal under 8 U.S.C. § 1252(g).

By way of background, "U visas provide nonimmigrant status for noncitizen victims of serious crime who help law enforcement." *Vasant Patel v. Noem*, No. 24 C 12143, 2025 WL

1489204, at *1 (N.D. Ill. May 23, 2025) (Alonso, J.) (citing 8 U.S.C. § 1101(a)(15)(U)). "Because only 10,000 U visas can be granted annually, USCIS may grant . . . deferred action to petitioners while their petitions are pending if USCIS finds the petitions to be bona fide." *Id.* (citing 8 U.S.C. § 1184(p)). But whether a petition for U-visa relief is still pending with USCIS does not inhibit the ability of U.S. Immigration and Customs Enforcement ("ICE"), a separate sub-agency within the United States Department of Homeland Security ("DHS"), from enforcing a final order of removal under § 1252(g). *See, e.g., E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). The Seventh Circuit's decision in *E.F.L.* squarely controls the outcome of this case: dismissal for lack of jurisdiction. *See id.* Consequently, not only should Hernandez-Lopez's motion for a temporary restraining order, Dkt. 4 ("Petitioner's Motion" or "Pet'r Mot."), be denied, but this case should be dismissed for lack of jurisdiction under Federal Rule of Civil Procedure 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court *must* dismiss the action." (emphasis added)).

Background

I. Statutory and Regulatory History

A. The U Visa Program

In October 2000, Congress created "U nonimmigrant status," for victims of qualifying crimes who cooperate with law enforcement in the investigation or prosecution of those crimes. *See* 8 U.S.C. § 1101(a)(15)(U). Congress limited the number of principal U visa grants to 10,000 each fiscal year. 8 U.S.C. § 1184(p)(2). Anticipating that petitioners would exceed the annual statutory cap, USCIS created a waiting list. *See* 8 C.F.R. § 214.14(d)(2); *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014 (Sept. 17, 2007). USCIS may grant an EAD and deferred action or parole to both a petitioner and their qualifying family members on the waiting list. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R.

§ 214.14(d)(2).

Although USCIS originally estimated that it would receive approximately 12,000 principal U visa petitions per year, *see* 72 Fed. Reg. at 53,033, the number of U visa petitions has far exceeded that estimate. The agency has received more than 20,000 principal petitions every year since 2012, including more than 30,000 per fiscal year from 2015 through 2018, and again in 2022, 2023, 2024, and the first two quarters in 2025.[1] To accommodate the increasing number of U visa petitions and backlog of those awaiting placement on the waiting list or final adjudication, USCIS may, in its discretion, grant work authorizations to U visa petitioners after finding that they have pending, bona fide petitions and they do not pose a national security or public safety risk. 8 U.S.C. § 1184(p)(6). These are referred to as "bona fide determinations" or "BFDs."[2] *Cf.* Pet. ¶ 15 (referring to how Hernandez-Lopez "awaits a bona fide determination from USCIS").

B. 8 U.S.C. § 1252(g)

To streamline removal proceedings, Congress has restricted judicial review by removing federal courts' jurisdiction to hear certain immigration-related claims in certain forums. More specifically, § 1252(g) deprives all courts of "jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence

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[1] *See* U.S. Citizenship and Immigration Services, *Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status ("I-918 Chart")*, https://www.uscis.gov/sites/default/files/document/data/i918u_visastatistics_fy2025_q2.xlsx (link opens Excel spreadsheet for downloading) (last accessed Aug. 27, 2025).

[2] Currently, USCIS adjudicates approximately 80% of such applications within 30.5 months. USCIS's case-processing times are available on the agency's public website. *See* https://egov.uscis.gov/processing-times (last accessed Aug. 27, 2025). This court may take judicial notice of these processing times. *See, e.g.*, *Lubega v. Mayorkas*, No. 23 C 17177, 2024 WL 4206425, at *2 (N.D. Ill. Sept. 11, 2024) (taking judicial notice of the case-processing times on the agency's website).

proceedings, adjudicate cases, or execute removal orders against any alien," notwithstanding "any other provision of law (statutory or nonstatutory)" other than § 1252 itself.[3] 8 U.S.C. § 1252(g); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486–87 (1999) (hereinafter, "*AADC*") (noting how § 1252(g) is "aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation" and that "that provision is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings"); *E.F.L.*, 986 F.3d at 965 ("1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders,'" which "includes challenges to DHS's 'legal authority' to do so.").

II. Factual and Procedural History

Hernandez-Lopez is a Mexican national who entered the United States in September 2007 as an H-2A temporary nonimmigrant foreign worker. *See* Respondents' Exhibit 2. He overstayed his H-2A visa and was ordered deported on September 3, 2015. *See* Respondents Exhibit 1 ("The respondent was ordered removed from the United States to Mexico."). Nearly a decade later, Hernandez-Lopez (along with many others), filed a lawsuit in the United States District Court for the Eastern District of California alleging unreasonable delay by USCIS regarding the adjudication of still pending U visa petitions. *See Moreira v. Higgins*, No. 25-cv-101, Dkt. 1 (E.D. Cal. Jan. 23, 2025). The parties in that matter ultimately filed a stipulated dismissal where USCIS would make BFD adjudications more quickly. *See id.* at Dkt. 12 (E.D. Cal. Mar. 27,

[3] Many provisions of the Immigration and Nationality Act ("INA") still refer to the Attorney General. In 2002, however, Congress transferred much of the INA's enforcement authority to the Secretary of Homeland Security. *See* 6 U.S.C. § 557; 8 U.S.C. § 1103; *see also Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019) ("Congress has empowered the Secretary to enforce the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law.").

2025) (Respondents' Exhibit 3).[4]

According to the petition, USCIS was honoring that arrangement and scheduled Hernandez-Lopez for a biometrics appointment in Chicago on August 25, 2025, to more quickly adjudicate his derivative U visa petition. Pet. ¶ 13 ("Petitioner appeared for his scheduled biometrics appointment at the U.S. Citizenship and Immigration Services [sic] for his pending I-918A Petition for U Nonimmigrant Status. No bona fide or waitlist determination has been issued per USCIS policy."). At that location, Hernandez-Lopez "was taken into custody by . . . Immigration and Customs Enforcement ('ICE') officers [sic] did not provide Petitioner with the basis for detention, nor does Petitioner's attorney know the basis for his detention." Pet'r Mot. at 3.

Hernandez-Lopez filed his petition for habeas corpus later that same day. *See* Dkt. 1. The petition generally alleges that detaining and deporting Hernandez-Lopez is unlawful while his derivative U visa is still pending with USCIS. *See* Pet. ¶ 15. Petitioner's Motion was filed later that evening and makes the same principal argument (albeit with some conclusory constitutional claims thrown in for good measure). *See* Pet'r Mot. at 4–6. Shortly thereafter, the emergency judge issued an order enjoining petitioner from being moved outside of this judicial district, the State of Illinois, or the United States. *See* Dkt. 3. After random assignment, this court reiterated that order. *See* Dkt. 7. Respondents now respond to Petitioner's Motion.

[4] Presumably, the resolution of that same lawsuit would have also applied to Hernandez-Lopez's wife's U visa petition. This would be important from a practical standpoint because hers is the principal U visa petition. *See* Pet. ¶ 6. Asking USCIS to have a derivative U visa petition be decided before the principal's would be putting the proverbial cart before the horse.

Legal Standard

Petitioner's Motion seeks a temporary restraining order ("TRO"). *See* Pet'r Mot. at 6. Such relief is meant to preserve the status quo pending a final, legal determination on the merits of the case. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). A preliminary injunction is "never awarded as of right," *Munaf v. Geren*, 553 U.S. 674, 690 (2008), and "is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion," *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quotations omitted). "The standards for granting a temporary restraining order and preliminary injunction are the same." *USA-Halal Chamber of Commerce, Inc. v. Best Choice Meats, Inc.*, 402 F. Supp. 3d 427, 433 (N.D. Ill. 2019) (collecting cases). More specifically, a movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Michigan v. U.S. Army Corps of Eng'rs*, 667 F.3d 765 (7th Cir. 2011).

As the Seventh Circuit has explained, an "applicant must make a strong showing that she is likely to succeed on the merits." *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762 (7th Cir. 2020). "[A] possibility of success is not enough. Neither is a 'better than negligible' chance." *Id.* Movants must also demonstrate clearly, and through specific factual allegations, that immediate and irreparable injury will result to them absent the order. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–02 (1983) (citations omitted). Only if the movant meets their burden of showing both a likelihood of success on the merits and an imminent risk of irreparable harm will courts then engage in further analysis. *See Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006).

Argument

I. Petitioner's Motion Should Be Denied Because He Has No Likelihood of Success.

As alluded to above, Hernandez-Lopez has no likelihood of success in this matter because this court lacks jurisdiction under § 1252(g). Among other things, that provision precludes judicial review of the decision to execute removal orders. The language in 8 U.S.C. § 1252(g) is unequivocal and its text controls here:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien *arising from the decision or action by the Attorney General to commence proceedings*, adjudicate cases, *or execute removal orders against any alien* under this chapter.

8 U.S.C. § 1252(g) (emphases added). Given this statutory language, the Supreme Court has likewise noted this power of enforcement discretion on numerous occasions. *See, e.g.*, *Arizona v. United States*, 567 U.S. 387, 396 (2012) ("A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all."). Petitioner's Motion ignores both the statute and this historical discretion. But binding case law does not.

In *AADC*, for example, the Supreme Court considered the reach of § 1252(g) and the Executive's discretion over immigration enforcement—concluding that the provision demands a narrow reading. More specifically, the jurisdictional bar "applies . . . to three discrete actions that the [federal government] may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (emphases in original). "At each stage the Executive has discretion to abandon the endeavor" of removal, or to proceed, without judicial interference. *Id.* at 483–84.

The Seventh Circuit's decision in *E.F.L.* is equally helpful regarding the definition of what constitutes "any" challenge to one of § 1252(g)'s three stages. In that case, the habeas petitioner sought injunctive relief to prevent her deportation pending administrative review of another petition for immigration relief (more specifically, a petition for relief under the Violence Against Women Act ("VAWA")). *E.F.L.*, 986 F.3d at 961–62. Although the *E.F.L.* petitioner's VAWA petition was still pending with USCIS, the court of appeals nonetheless held that § 1252(g) barred habeas jurisdiction because the "habeas petition falls directly in § 1252(g)'s path" as she "challenge[d] DHS's decision to execute her removal order while she seeks administrative relief." *Id.* at 964. And *E.F.L.* likewise explained that section "1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders,'" which "includes challenges to DHS's 'legal authority' to do so." *Id.* at 965 (alteration in original).

The petitioner's challenge in this case is indistinguishable from *E.F.L.*, as it is simply another challenge to the Executive's legal authority to execute a removal order while Hernandez-Lopez's U-visa petition is still pending before USCIS. *See* Pet. ¶ 15. To conclude that there is some sort of wiggle room around § 1252(g) under such circumstances would make the provision "a paper tiger; any petitioner challenging the execution of a removal order could characterize his or her claim as an attack on DHS's 'legal authority' to execute the order and thereby avoid § 1252(g)'s bar. We will not render § 1252(g) so toothless." *E.F.L.*, 986 F. 3d at 965 (internal citations omitted). And that approach is in line with many other courts of appeals. *See Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022); *Camarena v. Dir. of ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim . . . arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order

rather than its *execution* of a removal order."); *Tazu v. Att'y Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) (rejecting a habeas petition challenging the timing of DHS decision to execute a removal order); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (noting how § 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Tsering v. ICE*, 403 F. App'x 339, 342–43 (10th Cir. 2010); *Foster v. Townsley*, 243 F.3d 210, 214 (5th Cir. 2001).

In fact, other decisions from this judicial district are in line with *E.F.L.* In *Albarran v. Ricardo Wong*, for example, the plaintiff believed he was entitled to a stay of a reinstated removal order based on his interpretation of an internal ICE memorandum that made his offense "a second level priority." 157 F. Supp. 3d 779, 782 (N.D. Ill. 2016). The *Albarran* court concluded that § 1252(g) blocks review of specific types of administrative decisions. *Id.*; *accord Hussain v. Keisler*, 505 F.3d 779, 783–84 (7th Cir.2007); *Wigglesworth v. INS*, 319 F.3d 951, 960 (7th Cir. 2003); *Gomez-Chavez v. Perryman*, 308 F.3d 796, 800–01 (7th Cir. 2002); *Sharif ex. rel. Sharif v. Ashcroft*, 280 F.3d 786, 787 (7th Cir. 2002). Importantly, a foreign national cannot evade § 1252(g) by attempting to recharacterize a claim that, at its core, attacks the decision to execute a removal order.[5] *See Lemos v. Holder*, 636 F.3d 365, 367 (7th Cir. 2011); *Fedorca v. Perryman*, 197 F.3d 236, 240 (7th Cir. 1999) (affirming dismissal of habeas petition brought under 28 U.S.C. § 2241, because the relief sought (a stay of deportation) was barred by § 1252(g)); *Jung Ok Seol v. Holder*, No. 13 C 1379, 2013 WL 3835370, at *3 (N.D. Ill. July 24, 2013); *Dave v. INS*, No. 03 C 852, 2003 WL 466006, at *1 (N.D. Ill. Feb. 20, 2003).

[5] This memorandum uses the term "foreign national" as equivalent to the statutory term of "alien" within the INA.

Equally applicable here is how *Albarran* rejected the plaintiff's attempt to characterize his challenge to deportation as a claim under the Administrative Procedure Act ("APA"). 157 F. Supp. 3d at 786–87 (citing, *inter alia*, *Alghadbawi v. Napolitano*, No. 10-cv-1330, 2011 WL 4390084, at *4 (S.D. Ind. 2011) (because specific statutes bar jurisdiction, foreign national may not rely upon APA jurisdiction to overcome the specific withholdings of jurisdiction)). The *Albarran* court noted that the APA does not apply to agency decisions rendered under statutes that "preclude judicial review," 5 U.S.C. § 701(a)(1), and thus found that since § 1252(g) explicitly foreclosed review of the agency actions, the APA did not apply. *Id.* at 787.

In this case, Hernandez-Lopez cannot and does not challenge the validity of his underlying 2015 removal order, nor does he raise any legal arguments for release from confinement to the extent that order will be executed by ICE. His argument is simply that no removal order can be executed while his derivative U visa petition is pending. Given the case law discussed above, though, that challenge is plainly barred by § 1252(g). *See AADC*, 525 U.S. at 482; *see also Velarde-Flores v. Whitaker*, 750 F. App'x 606, 607 (9th Cir. 2019) (holding that district court lacked jurisdiction under § 1252(g) to enjoin removal of foreign nationals with final orders of removal and pending U Visa petitions); *Rivas-Melendrez v. Napolitano*, 689 F.3d 732, 737-38 (7th Cir. 2012) (holding that district court lacked jurisdiction under § 1252(g) to hear foreign national's challenge to execution of removal order after his removal).

Finally, to the extent the court reads the petition or Petitioner's Motion as an attack on Hernandez-Lopez's short-term detention by ICE in order to execute his removal order to Mexico, that claim would be equally barred by the plain language of § 1252(g). *See, e.g.*, *Tazu*, 975 F.3d at 298. This is because a "challenge to [a] short re-detention for removal attacks a key part of *executing* his removal order." *Id.* (emphasis added). The verb "execute" within § 1252(g)'s phrase

"execute removal orders" means "[t]o perform or complete." Execute, *Black's Law Dictionary* (11th ed. 2019). And to perform or complete a removal, DHS must exercise its "discretionary power to detain an alien for a few days. That detention does not fall within some other 'part of the deportation process.'" *Id.* (quoting *AADC*, 525 U.S. at 482). Thus, "a brief door-to-plane detention is integral to the act of 'execut[ing] [a] removal order[.]'" *Id.* (quoting § 1252(g)).

II. The Petitioner Has Not Shown Irreparable Harm.

This court should also deny Petitioner's Motion because he has not carried his burden to show that he is likely to suffer imminent, *irreparable* harm. *See Int'l Union, Allied Indus. Workers of Am., AFL-CIO v. Local Union No. 589*, 693 F.2d 666, 674 (7th Cir. 1982). Here, Hernandez-Lopez argues that he will face irreparable harm if his removal is not enjoined because "[s]hould ICE move Mr. Hernandez-Lopez outside of the jurisdiction of this court, away from counsel, or outside of the jurisdiction of the United States, his injuries will unable [sic] to be adequately addressed." Pet'r Mot. at 5. But this argument is based on the false premise that Hernandez-Lopez is somehow entitled to a U visa and thereby remain in the United States despite a final order of removal against him. And here, it is his existing removal order, not anything to do with his pending U visa petition, that is causing him harm. Respondents' Exhibit 1.

In other words, Hernandez-Lopez's pending U visa petition cannot provide relief from removal because that will not get around the prior order of removal already facing him. "This Court has said time and again that the degree of proof required for 'irreparable harm' is 'high,' and that a failure to surmount it provides 'grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.'" *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). In this case, Hernandez-Lopez has

failed to demonstrate that any irreparable harm—beyond the typical hardship experienced by someone removed from an executed final order of removal—is likely.

This context matters because Hernandez-Lopez is not truly seeking habeas relief where, as here, he seeks to instead use habeas as a vehicle to regularize his status within the United States via judicial order. In this regard, his removal-based petition is more reminiscent of the petitioner in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020). In that case, the Supreme Court explained that by seeking vacatur of his removal order, as well as an opportunity to apply for asylum and other relief from removal, the habeas petitioner was seeking something "far outside" and "entirely different" from what can be said to be "core" habeas relief. *Id.* at 117–19.[6] Applying that logic here, the problem in this case vis-à-vis irreparable harm is that Hernandez-Lopez's removal-based claim for habeas relief does not "contest[] the lawfulness of restraint" itself, but instead he seeks the ability to "remain in [the United States] or to obtain administrative review potentially leading to that result." *Thuraissigiam*, 591 U.S. at 117; *see also E.F.L.* 986 F.3d at 965–66 (discussing *Thuraissigiam*); *Rauda*, 55 F.4th at 779–80 (same). Indeed, this same flaw with Hernandez-Lopez's theory of harm via deportation was touched upon by the Court in *Thuraissigiam*:

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[6] This same aspect of "core" habeas relief was also recently revisited by the Court in *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025) (per curiam). In *J.G.G.*, however, the petitioners' argument was premised upon a finding that the relief sought "necessarily impl[ies] the invalidity of [petitioners'] confinement and removal," which consequently made habeas in the district of confinement (rather than an APA claim in the District of Columbia) the appropriate remedial vehicle for relief in that case. *Id.* at 1005–06 (quotation omitted); *see also J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *35 n.40 (D.C. Cir. Mar. 26, 2025) (Walker, J., dissenting) (explaining that the petitioners in *J.G.G.* could seek habeas relief, unlike Thuraissigiam, who "was not making a core habeas challenge to his removal" but "seeking affirmative administrative relief").

> While respondent does not claim an entitlement to release, the Government is happy to release him—provided the release occurs in the cabin of a plane bound for Sri Lanka. . . . Respondent does not want anything like that. . . . [But c]laims so far outside the "core" of habeas may not be pursued through habeas.

591 U.S. at 120. There is no reason that Hernandez-Lopez's argument of irreparable harm should be accepted here regarding removal when a similar argument for such "habeas" relief was already rejected by the Supreme Court.

III. The Balance of Equities and the Public Interest Favor Respondents.

The final two *Winter* factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Because petitioner has not made either threshold showing, this court need not reach this element for preliminary relief. But Hernandez-Lopez has further failed to demonstrate—as he must—that his threatened irreparable injury of deportation to Mexico outweighs the threatened harm that preliminary injunctive relief would cause the federal government and the public interest—that is, nonparties.[7] *See Cassell v. Snyders*, 990 F.3d 539, 545 (7th Cir. 2021); *see also Nken*, 556 U.S. at 435. This court weighs these factors using a "sliding scale" approach: "The more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor." *Cassell*, 990 F.3d at 545 (quoting *Valencia v. City of Springfield*, 883 F.3d 959, 966 (7th Cir. 2018)).

[7] Such third parties would include U.S. citizens, lawful permanent residents, and other foreign nationals with legal permission to be in the United States, as they may suffer injuries from unlawfully present foreign nationals who compete for employment and scarce resources. *See, e.g.*, *De Canas v. Bica*, 424 U.S. 351, 356–57 (1976). Similarly, not enforcing immigration laws against such unlawfully present foreign nationals may result in U.S. persons becoming crime victims. *See, e.g.*, Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025); *Steinle v. City & County of San Francisco*, 230 F. Supp. 3d 994, 1004–05 (N.D. Cal. 2017).

In this case, the petitioner's argument for harm ignores how Hernandez-Lopez has illegally overstayed his H-2A visa for 18 years. And he has continued living in this country for ten years after he was already ordered removed. *Cf. Achacoso-Sanchez v. INS*, 779 F. 2d 1260, 1266 (7th Cir. 1985) (courts are "entitled to look askance on aliens who ignore valid orders of deportation, wait for the INS to arrive at their doorsteps, and then file specious judicial actions that have no purpose other than to obtain stays of deportation"); *cf. also* Daniel Kanstroom, *The Long, Complex, and Futile Deportation Saga of Carlos Marcello*, in *Immigration Stories* 113, 117 (David A. Martin & Peter H. Schuck eds., 2005) (discussing an infamous New Orleans mob boss, whose deportation proceedings "lasted more than thirty years without government success" due to numerous eleventh-hour habeas petitions before his orders of removal could be executed); H.R. Rep. No. 87-565, at 2 (1961) (discussing how meritless lawsuits filed "solely for the purpose of preventing or delaying indefinitely deportation" began to proliferate). Moreover, when addressing the balance of the harms, Petitioner's Motion rests entirely on the conclusory argument that he deserves "vindication of fundamental constitutional rights, like the right to due process and to be free from unlawful government custody." Pet'r Mot. at 6. But Hernandez-Lopez received due process through his removal proceedings over a decade ago. He therefore implicitly concedes the inability to demonstrate any harm absent a clear victory on the merits (that is, his conclusory constitutional arguments). Hence, if this court does not find that Hernandez-Lopez has "clearly demonstrated" such constitutional harms (or that it cannot address them due to § 1252(g)), this court must deny Petitioner's Motion.

Finally, this court may grant preliminary injunctive relief only if petitioner "gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined." Fed. R. Civ. P. 65(c). Rule 65(c) thus makes some

form of security *mandatory*. *See Gateway E. Ry. Co. v. Terminal R.R. Ass'n of St. Louis*, 35 F.3d 1134, 1141 (7th Cir. 1994). Any argument to the contrary here would overlook that restraining active governmental operations (in this case, undoing the deportation arrangements being made for the petitioner) *does* cost the federal government money and resources. *See Habitat Educ. Ctr. v. U.S. Forest Serv.*, 607 F.3d 453, 458 (7th Cir. 2010).

Conclusion

For the foregoing reasons, the court should deny Petitioner's Motion and dismiss this case for lack of jurisdiction.

Respectfully submitted,

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