UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
(at Covington)

ISIDRO CALLEJA SEBASTIAN, Plaintiff, v. SAM OLSON, et al. Defendants.	)	Civil Action No. 2:25-cv-00167-SCM

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RESPONSE TO
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION[1]

This Court should deny Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction [R. 5] (the Motion). This Court lacks jurisdiction to grant Petitioner's request—that this Court halt his removal proceedings and cancel an immigration hearing. Even if this Court had jurisdiction over this request, Petitioner has not shown a likelihood of success on the merits or irreparable harm sufficient to grant injunctive relief.

Petitioner is a native and citizen of Mexico who arrived and remained in this country without authorization or inspection. [*See* R. 1: Petition at 5 (¶¶ 20, 22).] Petitioner was arrested,

[1] Filed on behalf of Respondents Kristi Noem, in her official capacity as the Secretary of the Department of Homeland Security; Pamela Bondi, in her official capacity as Attorney General of the United States; Todd Lyons, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; and Samuel Olson, in his official capacity as Field Office Director for the U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations.

detained, and placed in removal proceedings. [*Id.* at 5 (¶¶21-22).] Petitioner has conceded removability, but he has applied for asylum and withholding of removal.[2] [*See generally id.* at 6 (¶30).] He was scheduled for a final merits hearing on that application on November 12, 2025. [*See id.* (¶31).]

The Motion seeks an extraordinary remedy by asking this Court to "enjoin[] Respondents from continuing removal proceedings against Petitioner" and "vacate the removal hearing scheduled for November 12, 2025."[3] [*See* R. 5: Motion at 53.] Respectfully, such a request is beyond this Court's jurisdiction under 8 U.S.C. § 1252(a)(5), (b)(9), and (g).

The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Congress, having the power to establish the courts, must define their respective jurisdictions."). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen*, 511 U.S. at 377 (citations omitted); *see also Sheldon*, 49 U.S. at 449 ("Courts created by statute can have no jurisdiction but such as the statute confers."). As relevant here, in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Several of IIRIRA's provisions—as well as provisions of the REAL ID Act of 2005, which refined IIRIRA's judicial review scheme—deprive this Court of jurisdiction over Petitioner's request. *See DHS v. Thuraissigiam*, 591 U.S. 103, 112 (2020) ("A major objective of

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[2] Even if a noncitizen is otherwise removable as charged under the Immigration and Nationality Act, he may apply for relief and protection from removal, including asylum, withholding of removal under the Act (statutory withholding of removal), and protection under the regulations implementing the Convention Against Torture. *See* 8 U.S.C. § 1229a(c)(4); 8 C.F.R. § 1240.1(a)(1)(ii)-(iii). At the conclusion of the merits hearing, the Immigration Judge determines whether the noncitizen may be removed from the United States and whether he qualifies for relief and protection from removal; if removable and all applications are denied, the IJ enters a removal order. 8 U.S.C. § 1229a(c)(1)(A). The noncitizen may appeal the IJ's order to the Board of Immigration Appeals within thirty days of the order. 8 C.F.R. § 1003.38(b).

[3] This second request appears to be moot. *See, e.g.*, *W6 Rest. Grp., Ltd v. Loeffler*, 140 F.4th 344, 349-50 (6th Cir. 2025) (holding issue is moot when events during litigation mean a court's decision would "lack any practical effect").

IIRIRA was to 'protec[t] the Executive's discretion' from undue interference by the courts; indeed, 'that can fairly be said to be the theme of the legislation.'" (quoting *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 486 (1999) ("*AAADC*").

First, 8 U.S.C. § 1252(g) deprives the Court of jurisdiction to review claims arising from the three discrete actions. Under § 1252(g), "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory) . . . 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 [DHS Secretary][4] to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g); *see also Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (plurality) (concluding that district court lacks jurisdiction over challenge to "decision to . . . seek removal."); *id.* at 314-15 (Thomas, J., concurring in judgment) (stating that the INA bars any "aliens' claims related to their removal" unless raised in accordance with the rest of section 1252).

Congress thus spoke clearly, providing that "no court" has jurisdiction over "any cause or claim" arising from the commencement of proceedings, adjudication of cases, or execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. *See* § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under § 2241, as well as review pursuant to the All Writs Act and Administrative Procedure Act. *See AAADC*, 525 U.S. at 482; *see also United States v. Texas*, 599 U.S. 670, 680 (2023) ("In light of inevitable resource constraints and regularly changing public-safety and public-welfare needs, the

[4] Under the Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135, as amended, the references to the "Attorney General" in the Immigration and Nationality Act also encompass the DHS Secretary, either solely or additionally, with respect to statutory authorities vested in the Secretary in the HSA or subsequent legislation, including in relation to immigration proceedings before DHS. 6 U.S.C. § 557.

Executive Branch must balance many factors when devising arrest and prosecution polices. That complicated balancing process in turn leaves courts without meaningful standards for assessing those policies.").

Second, the REAL ID Act's amendments to § 1252(b)(9) provide that "[j]udicial review of *all questions of law and fact*, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphases added). By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). Congress thus divested district courts of jurisdiction over such matters and vested review in only the courts of appeals. *Id.*; *see also Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.") (citation omitted). These provisions sweep more broadly than § 1252(g). *See AADC*, 525 U.S. at 483; *Vetcher v. Sessions*, 316 F. Supp. 3d 70, 76 (D.D.C. 2018) (noting that 8 U.S.C. § 1252(a)(5) and (b)(9) "streamline all issues arising from removal proceedings into a petition for review that must be filed with a court of appeals after a final order of removal from the BIA").

For its part, the Supreme Court has described § 1252(b)(9) as a "general jurisdiction limitation." *AAADC*, 525 U.S. at 482. And while recognizing that § 1252(g) does not apply to all "decisions or actions that may be part of the deportation process—such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to

include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order," the Supreme Court has nevertheless found that § 1252(g) applies to "three discrete actions that the [Executive Branch] may take: [a] 'decision or action' to *'commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Id.* (emphases in original). In at least those situations, courts have consistently concluded that the various provisions of § 1252 divest the district courts of jurisdiction to review all questions of law and fact arising from "any action taken or proceeding brought to remove an alien from the United States," 8 U.S.C. § 1252(b)(9), as well as "any cause or claim by or on behalf of an alien arising from the decision or action . . . to . . . execute removal orders," *id.* § 1252(g).

Courts of Appeals have repeatedly concluded that a noncitizen may not circumvent the jurisdictional bar imposed by the REAL ID Act by indirectly challenging his removal order, recognizing that when an action in district court, no matter how it is styled, "is, in effect, a challenge to the ultimate [o]rder of [r]emoval," the district court lacks jurisdiction. *Haider v. Gonzales*, 438 F.3d 902, 910 (8th Cir. 2006) (concluding that the REAL ID Act bar to district court jurisdiction applies to habeas petition challenging lack of notice but not directly challenging *in absentia* removal order); *see also, e.g.*, *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011); *Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009); *Estrada v. Holder*, 604 F.3d 402, 408 (7th Cir. 2010) (affirming dismissal for lack of jurisdiction because if the plaintiff succeeded in contesting the rescission of his permanent-resident status on the merits, the "order of removal by the IJ and affirmed by the BIA—which rested on the conclusion that [plaintiff] is no longer a lawful permanent resident—would necessarily be flawed"); *Morales-Izquierdo v. Dep't of Homeland Sec.*, 600 F.3d 1076, 1082-83 (9th Cir. 2010) (concluding that adjustment-of-status challenge inextricably linked to reinstatement of noncitizen's removal order

and thus district court lacked jurisdiction); *Lang v. Napolitano*, 596 F.3d 426, 429 (8th Cir. 2010) (finding "obvious lack of district court jurisdiction" over claim for "injunctive and mandamus relief that would prohibit the agency from 'executing' . . . removal order"); *Jimenez v. Holder*, 338 F. App'x 194, 196 (3d Cir. 2009) (concluding district court lacked jurisdiction over habeas petition that, "though not explicitly styled as a challenge to his removal order, calls for vacating the BIA's decision upholding the order"); *Varela-Sebastian v. Mukasey*, 269 F. App'x 804, 805 (10th Cir. 2008) (same, where noncitizen asked for review of claim to citizenship).

Even if this Court had jurisdiction, it should deny the Motion because Petitioner has not shown that he is likely to succeed on the merits, for the reasons stated in the Response [R. 3]. *See also Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133, at *2-5 (E.D. Cal. Nov. 17, 2025) (denying motion or temporary restraining order because petitioner not likely to prevail on habeas petition argument); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025 WL 3208284, at *2-6 (E.D. Cal. Nov. 17, 2025) (same); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, at *3-8 (S.D. Tex. Nov. 13, 2025) (denying habeas petition); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *1-5 (E.D. Mo. Nov. 10, 2025) (same); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972, at *2-7 (W.D. La. Nov. 4, 2025) (same); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025) (same), *report and recommendation adopted*, No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025)

Nor has Petitioner shown irreparable harm. Irreparable harm must be "both 'certain and immediate,' not 'speculative or theoretical.'" *Int'l Union of Painters & Allied Trades Dist. Council No. 6 v. Smith*, 148 F.4th 365, 371 (6th Cir. 2025) (quoting *D.T. v. Sumner Cnty. Sch.*, 942 F.3d 324, 327 (6th Cir. 2019)). Petitioner offers only conclusory allegations and speculation

about his "risk [of asylum] denial and removal." [*See* R. 5: Motion at 57.] There is no indication that Petitioner's detention has inhibited his ability to work with counsel to file the pending habeas petition. [*See generally* R. 1: Petition at 1-28.] Petitioner's conclusory allegations of potential harm cannot support injunctive relief. *See, e.g.*, *Sarkisov v. Bondi*, 138 F.4th 976, 979 (6th Cir. 2025) (rejecting "conclusory assertion[s]" in denial of motion to stay removal).

Conclusion

This Court should deny Petitioner's Motion.

Respectfully submitted,

PAUL C. MCCAFFREY
ACTING UNITED STATES ATTORNEY

By: s/Kyle M. Melloan
Kyle M. Melloan
Assistant United States Attorney
260 West Vine Street, Suite 300
Lexington, Kentucky 40507-1612
(859) 685-4828
kyle.melloan@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

/s/Kyle M. Melloan
Kyle M. Melloan
Assistant United States Attorney