District Judge Jamal N. Whitehead
Magistrate Judge Michelle L. Peterson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABEL MARTINEZ ALEMAN a/k/a PEDRO RIVERA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02346-JNW-MLP

FEDERAL RESPONDENTS'[1] OPPOSITION TO PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND STAY OF REMOVAL

Noted for Consideration:
December 4, 2025

I. INTRODUCTION

This Court should deny Petitioner Abel Martinez Aleman's motion for a temporary restraining order ("TRO") staying his removal or transfer to another facility. Dkt. No. 2, TRO Mot. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner, an El Salvadoran citizen subject to a final order of removal, pursuant to 8 U.S.C. § 1231(a).

Petitioner has had multiple opportunities to seek relief from removal. Petitioner first applied for asylum one month after he illegally enter the United States in 1988. Pet., ¶ 18.

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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1 However, he chose not to appear for his immigration hearing for fear he would lose without an
2 attorney. *Id.* Instead, Petitioner bought a someone else's birth certificate to obtain a fraudulent
3 work permit and then continued to seek asylum under his fraudulent identity. But when this failed
4 and he was granted voluntary departure by an immigration judge in 2009, Petitioner chose to stay
5 in the United States, which converted the voluntary departure to a removal order. *Id.*, ¶ 19. Now
6 claiming ineffective assistance of counsel by his previous counsel, Petitioner filed a motion to
7 reopen his removal proceedings in August 2025. *Id.*, ¶ 22. An immigration judge denied the
8 motion, which is now being appealed to the Board of Immigration Appeals ("BIA"). However,
9 the BIA has denied Petitioner's motion for stay of his removal.

10 While Petitioner has had multiple opportunities to seek relief from removal, the habeas
11 petition and the TRO motion demonstrate that he does not take accountability for the unfortunate
12 decisions he has made in the past. He did not show up to his original immigration proceedings
13 because of his neighbor's statements; he did not voluntary depart the country when granted the
14 opportunity to do so because of bad advice from his attorney. He concedes that he used a
15 fraudulent identity, but he does not seem to take any responsibility for lying about his identity for
16 years. In sum, the facts here do not support the use of this Court's equitable power to stay his
17 removal. Accordingly, the Motion should be denied.

18 **II. FACTUAL BACKGROUND**

19 Petitioner is a native and citizen of El Salvador. Hammer Decl., ¶ 3. He entered the United
20 States without inspection and applied for asylum in 1988. *Id.*, ¶¶ 5, 6. His applications for relief
21 from removal were denied the following year and Petitioner was placed into removal proceedings.
22 *Id.*, ¶ 7. However, Petitioner never appeared for those proceedings. *Id.*, ¶¶ 8, 9; Pet., ¶ 18. In
23 1991, he fraudulently used someone else's identity (Pedro Rivera) to apply for immigration
24 benefits, including by applying again for asylum. Pet., ¶¶ 19-20; Hammer Decl., ¶¶ 10, 11. U.S.

Citizenship and Immigration Services referred his asylum claim as Pedro Rivera to the immigration court in 2007. Hammer Decl., ¶ 13. On July 14, 2009, the immigration judge granted Petitioner's request for voluntary departure. Lambert Decl., Ex. A. But Petitioner did not voluntarily depart and the order converted to a removal order to El Salvador or to Mexico in the alternative. *Id.*, ¶ 17; Pet., ¶¶ 20-21.

Petitioner asserts that he was placed on an order of supervision in 2014. Pet., ¶ 22. He further asserts that this was terminated in January 2025. *Id.* On August 18, 2025, Petitioner was issued a notice scheduling his removal. Id. He filed a motion to reopen his removal proceedings, which an immigration judge denied on October 9, 2025. Lambert Decl., Ex. B. Petitioner has appealed this order to the BIA. However, the BIA denied Petitioner's motion to stay his removal pending his appeal. Pet., ¶ 23.

ICE detained Petitioner at his check-in on November 18, 2025. *Id.*, ¶ 24. He is currently at the Northwest ICE Processing Center.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction 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) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

A plaintiff seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See Winter*, 555

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U.S. at 20 ("*Winter* factors"). Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

The purpose of preliminary injunctive relief is to preserve the status quo pending final judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

IV. ARGUMENT

A. This Court lacks jurisdiction to halt the execution of a valid order of removal.

The INA bars this Court's review of Petitioner's removal order and inextricably intertwined request to stay her removal. 8 U.S.C. § 1252(g). Congress has spoken clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g).

In the exercise of its constitutional power to define federal court jurisdiction, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided in the newly-enacted Section 1252(g) that:

> Except as provided in this section and notwithstanding any other provision of law, 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 Act.

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8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas and mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now provides that:

> 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) (2017) (emphasis added).

In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three discrete actions that DHS may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (original emphasis). Petitioner is subject to a long-standing removal order, and ICE's decision to execute that removal order falls squarely within one of the discrete actions precluded from judicial review under Section 1252(g).

Petitioner argues that Section 1252(g) does not bar review here because he "brings a collateral attack to his removal order, rather than challenging directly the execution of the removal order." Pet., ¶ 8. He asserts that he will be unable to obtain the ultimate relief of asylum or cancellation of removal if he is removed. While this may be accurate, his request directly challenges the execution of his removal order. This is not a collateral attack where the very legality of detention under any statutory provision is at issue. *See Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 910 (W.D. Wash. 2025) (finding jurisdiction to review a claim arising from the Government's grant of deferred action). Instead, Petitioner takes issue with what detention authority he would be detained pursuant to if his motion to reopen is ultimately granted and

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1 whether due process entitled him to a bond redetermination hearing. Pet., ¶¶ 85-92. Here, despite
2 how Petitioner attempts to frame his claims as constitutional, the government action or decision
3 that gives rise to Petitioner's claims here is ICE's decision to execute his removal order while his
4 motion to reopen is pending. *See Arce v. United States*, 899 F.3d 796, 799-800 (9th Cir. 2018).

5 Numerous courts of appeals, including the Ninth Circuit, have consistently held that claims
6 seeking a stay of removal – even temporarily to assert other claims to relief – are barred by Section
7 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred
8 plaintiff's claim seeking a temporary stay of removal while he pursued a motion to reopen his
9 immigration proceedings); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e
10 do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the
11 government's decision to execute a removal order. If we held otherwise, any petitioner could
12 frame his or her claim as an attack on the government's authority to execute a removal order rather
13 than its execution of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021)
14 (rejecting plaintiff's argument that jurisdiction remained because petitioner was challenging
15 DHS's "legal authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. U.S.*, 975
16 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide whether to execute a removal
17 order includes the discretion to decide when to do it" and that "[b]oth are covered by the statute")
18 (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district
19 court's injunction staying removal, concluding that Section 1252(g) stripped district court of
20 jurisdiction over removal-based claims and remanding with instructions to dismiss those claims);
21 *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional
22 claims arising from the execution of a final order of removal, and language barring "any cause or
23 claim" made it "unnecessary for Congress to enumerate every possible cause or claim").
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1 **B. Petitioner is unlikely to succeed on the merits.**

2 Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to
3 show the likelihood of success on the merits, [the court] need not consider the remaining three
4 *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on a habeas
5 petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or
6 treaties of the United States." *See* 28 U.S.C. § 2241. Petitioner incorrectly claims that his detention
7 is unlawful under 8 U.S.C. § 1231(b)(3) "because he has a pending motion to reopen based on his
8 fear of return to El Salvador." TRO Mot., at 1.

9 The INA governs the detention and release of noncitizens during and following their
10 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
11 detention periods are generally referred to as "pre-order" (meaning before the entry of a final order
12 of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal).
13 *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order
14 detention).

15 When a final order of removal has been entered, a noncitizen enters a 90-day "removal
16 period." 8 U.S.C. § 1231(a)(1). Section 1231(a)(6) authorizes the U.S. Department of Homeland
17 Security ("DHS") to continue detention of noncitizens after the expiration of the removal period.
18 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme
19 Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring
20 about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689
21 (2001). The Supreme Court has further identified six months as a presumptively reasonable time
22 to bring about a noncitizen's removal. *Id.*, at 701.

23 Petitioner is subject to a final order of removal. Hammer Decl., ¶ 17. He has been detained
24 since November 18, 2025. Absent this Court's provisional order staying Petitioner's removal (Dkt.

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No. 8), Petitioner's removal to El Salvador is likely to occur within the reasonably foreseeable future. *Id.*, ¶¶ 3-4.

Petitioner's reference to Section 1231(b)(3) does not support his position that his detention is unlawful. Under that Section, "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). Petitioner has not demonstrated that any such decision has been made or is likely to be made in the future. *See* Lambert Decl., Ex. B. Furthermore, Petitioner has filed a motion to reopen and his asserted "statutory right to pursue" a motion to reopen remains in process even if he is removed from the United States.[2] *See* Rauda, 55 F.4th at 777 (stating that the plaintiff "has taken full advantage of his statutory rights [to pursue a motion to reopen] and will continue to have access to the process guaranteed to him under the statute even if he is removed").

Finally, Petitioner's assertions concerning the procedure for third country removal are not relevant here. Petitioner's removal order designates El Salvador and, in the alternative, Mexico, as the countries of removal. There is no evidence that ICE will not be able to remove Petitioner to either country. Thus, Petitioner's reliance on cases involving third country removal analysis do not pertain to the issues before this Court. Pet., ¶¶ 39, 44, 45. Petitioner has been on notice of his removal order designating El Salvador and Mexico as countries of removal since 2009.

C. The balance of the equities and public interests favor the Government.

It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's*

[2] Petitioner will not be eligible for asylum or cancellation of removal if removed from the United States. However, the "statutory right" at issue here is the right to file a motion to reopen.

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1 *House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has
2 recognized that the public interest in enforcement of the immigration laws is significant.") (citing
3 cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in
4 prompt execution of removal orders). Furthermore, the immigration laws and regulations provide
5 for the relief sought here through the administrative process. This public interest outweighs
6 Petitioner's private interest here. Petitioner has received sufficient process – under his real identity
7 as well as a fraudulent one. He has been subject to the present removal order since 2009.

8 Accordingly, this Court should deny his TRO Motion.

9 **CONCLUSTION**

10 For all the foregoing reasons, the TRO Motion should be denied.

11 DATED this 1st day of December, 2025.

12 Respectfully submitted,

13 CHARLES NEIL FLOYD
United States Attorney

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21 *I certify that this memorandum contains 2,586 words, in compliance with the Local Civil Rules.*

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