UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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| CRISTOFER A. ORTEGA-VARELA,<br><br>Petitioner,<br><br>v.<br><br>CHRIS BRACKETT, in his official capacity as Superintendent, Stafford County Department of Corrections, *et al.*,<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 1:25-cv-483-PB-TSM |

FEDERAL RESPONDENTS' OBJECTION TO
EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER

Federal Respondents, by Erin Creegan, United States Attorney for the District of New Hampshire, respectfully object to Petitioner's Emergency Motion for Temporary Restraining Order, ECF No. 13, because he has failed to establish that he is entitled to such an order from this Court. Specifically, Petitioner seeks an order from this Court preventing his removal from the country during the pendency of the habeas proceedings in this Court. However, at heart, his arguments justifying a stay boil down to a challenge to the validity of his removal – an issue that this Court does not have jurisdiction to review. Therefore, his motion for a temporary restraining order ("TRO") must be denied.

As outlined in greater detail in previous pleadings, Petitioner is a citizen of Honduras subject to a final order of removal that was issued in 2019 and became administratively final in 2024, when the Board of Immigration Appeals ("BIA") dismissed the appeal of the order. Emerg. Mot. at 6-7 (ECF No. 13-1). It appears that no petition for review was brought in the Third Circuit, the governing court of appeals. In June 2025, Petitioner was awarded Special

Immigrant Juvenile ("SIJ") status, an immigration classification that allows him to apply to adjust status to legal permanent resident when a visa in the relevant category becomes available.

In July 2025, Petitioner was arrested and detained by ICE. He then filed a motion to reopen his removal proceedings with the BIA. *Id.* at 7. The BIA denied that motion on October 21, 2025. *Id.* Petitioner has appealed the BIA's denial to the Third Circuit, and that appeal remains pending. *Id.* However, the Third Circuit declined to grant Petitioner's motion for a stay of removal pending ruling on that appeal, "because he has not shown a likelihood of success on the merits of his petition for review." *Id.*, Exhibit A as 1 (ECF No. 13-4).

A TRO is an extraordinary remedy which must be granted "sparingly and only in cases where the need for extraordinary equitable relief is clear and plain." *Nw. Bypass Grp. v. U.S. Army Corps of Eng'rs*, 453 F. Supp. 2d 333, 338 (D.N.H. 2006) (quotation omitted). In considering whether to grant an TRO, courts apply the same four factors that govern grants of preliminary injunction: likelihood of success on the merits, the prospect of irreparable harm to the moving party if the order is not granted, the balance of the equities, and the impact of the order on the public interest. *Esso Standard Oil Co. (Puerto Rico) v. Monroig-Zayas*, 445 F.3d 13, 17-18 (1st Cir. 2006); *see also Arevalo v. Ashcroft*, 344 F.3d 1, 9 (1st Cir. 2003) ("[T]he applicable standard for evaluating requests for stays pending review of final orders of removal is the four-part algorithm used for preliminary injunctions."). The crucial factor in this analysis is likelihood of success on the merits; the First Circuit has observed that "if the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." *Esso Standard Oil Co.*, 445 F.3d at 18.

Petitioner cannot prevail here because he cannot establish likelihood of success on the merits. Throughout this litigation, his central argument boils down to the assertion that his removal is constitutionally defective, because it prevents him from exercising the opportunity SIJ status has provided him to apply to adjust status, once a visa becomes current. But this Court cannot entertain this argument, because it requires reviewing the merits of his removal order – a review that, under the INA, lies only in the federal court of appeals. 8 U.S.C. § 1252(a)(5) ("[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e)" (providing for narrow exceptions not relevant here)). Thus, as another session of this Court has recently held, a federal district court is " 'without jurisdiction to entertain a challenge, even an indirect one, to a removal order.' " *Luzolo v. Strafford County Department of Corrections, Superintendent et al.*, 1:26-cv-00031-LM-TSM (D.N.H.), Endorsed Order (Feb. 26, 2026) (quoting *Ruiz v. Napolitano*, Civ. No. 11-11264-DPW, 2011 WL 2971950, at *1 (D. Mass. July 20, 2011); *see also De Gonzalez v. Holder*, Civ. No. 12-11539-FDS, 2012 WL 3610958, at *1 (D. Mass. Aug. 20, 2012) (concluding that 8 U.S.C. § 1252(a)(5) deprived court of jurisdiction to consider habeas petitioner's argument that detention was unlawful because it was based on an constitutionally invalid removal order).

Further, Petitioner has had the opportunity to challenge his removal. He has submitted a motion to reopen to the BIA. *See Compere v. Nielsen*, 358 F. Supp. 3d 170, 179 n.11, 179-80 (D.N.H. 2019) (discussing significance of a motion to reopen). That motion has been denied, and he has appealed the denial to the Third Circuit, which has denied a further stay on the basis that he has not shown a likelihood of success on the merits.

The other bases Petitioner advances as support for a TRO, and habeas relief generally, fare no better. Petitioner's pleadings do not establish that his arrest violated the Fourth Amendment or immigration officers' statutory authority. *See* Emerg. Mot. at 7-8 (ECF No. 13-

1); Pet. ¶ 29-30. But even if he had, the Supreme Court has long held that the exclusionary rule does not apply in removal proceedings. *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984). As it has observed, "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred;" for this reason, "[t]he mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding." *Id.* at 1039-40 (1984) (cleaned up). In this case, on finding out Petitioner's identity – which Petitioner describes occurring at the scene of his arrest, when agents checked his I.D. – agents determined that he did not currently have legal status in the United States, justifying his arrest.[1] *See* Pet. ¶ 30 (ECF No. 1). In short, if Petitioner believes his arrest was unlawful, his remedy is a civil rights claim, not release pending his removal from the country.

Nor does Petitioner's claim that immigration authorities failed to justify his detention under 8 U.S.C. § 1231 succeed, for the reasons previously discussed in Federal Respondents' Objection to Motion for Release or for a Bond Hearing (ECF No. 11). In particular, he fails to address the significance of the government's ability to remove him to Honduras in this analysis. Detention is permissible to effectuate a noncitizen's removal; "[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and

[1] The First Circuit has acknowledged a narrow exception to *Lopez-Mendoza*'s general rule, by allowing for suppression of evidence seized where an illegal search was such an "egregious violation[ ] of [the] Fourth Amendment" that so "transgress[ed] notions of fundamental fairness and undermine[d] the probative value of the evidence obtained," as to constitute a Fifth Amendment violation of the right to due process. *Corado-Arriaza v. Lynch*, 844 F.3d 74, 78 (1st Cir. 2016). Petitioner has not established that his arrest was this "egregious." And even this exception does not allow suppression of identity itself, which is what underlies removal proceedings.

prolongs a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009) (cleaned up). Petitioner's argument that his removal is not foreseeable relies entirely on the Court agreeing with his challenge to the merits of his removal, rather than on any demonstrated inability on the government's part to remove him independent of the validity of his removal order.

Petitioner is correct that "[c]ourts have regularly ordered this relief [stay of removal] during the pendency of immigration-related habeas petitions." Emerg. Mot. at 5. However, the cases he cites are materially distinguishable from his own circumstances and do not establish an independent right that he can claim untethered from the facts of those cases. Some involve petitioners who did not already have final orders of removal and where the government agreed to a TRO. *See Ortiz Sintuj v. Stramper*, No. 2:26-CV-00027-JAW, 2026 WL 156367, at *2 (D. Me. Jan. 21, 2026) (respondents conceded that a TRO should issue to protect right to counsel for a petitioner who had already been transferred out of the district and who sought a bond hearing pending removal proceedings); *Garcia v. Stamper*, No. 2:26-CV-00025-JAW, 2026 WL 232276 (D. Me. Jan. 28, 2026) (same). Others involve orders that required not a blanket stay, but notice to the petitioner and court before removal – relief already in place here. *See Chuqui Paredes v. Moniz*, No. CV 26-10335-FDS, 2026 WL 309632 (D. Mass. Feb. 5, 2026) (ordering that "petitioner not be moved outside this District without prior notice until further order of the Court"); Order (Nov. 26, 2025) at 3 (ECF No. 2) ("Respondents shall provide this court with at least 72 hours of advance notice of any scheduled removal or transfer of Petitioner out of this court's jurisdiction," to be filed in writing on the docket and providing reasons for both the move and why it should not be stayed pending further court proceedings).

Others implicate different, previously established rights. For instance, the petitioner in *Walter A. v. Berg*, was not directly challenging his removal, but seeking "to enforce USCIS's grant of deferred action," which was supposed to run through October 2028. No. 25-CV-4720 (SRN/LIB), 2025 WL 3707593, at *3 (D. Minn. Dec. 22, 2025). In contrast, Petitioner here has never received a grant of deferred action; U.S. Citizenship and Immigration Services rescinded its policy of categorically considering those with SIJ status for deferred action on June 6, 2025, and Petitioner was granted SIJ status on June 12, 2025. *See* Pet. ¶ 26; USCIS, "Special Immigrant Juveniles," https://www.uscis.gov/working-in-US/eb4/SIJ (last viewed Feb. 27, 2026). Federal Respondents acknowledge that another court has stayed rescission of the deferred action policy, *see id.*, but submit that a petitioner seeking to reinstate a previous guarantee of deferred action on which he had relied is differently situated from Petitioner, who never received such a guarantee. Thus, "courts have granted habeas relief where the government seeks to remove noncitizens whose deferred action status remains in effect," but Petitioner does not fall into that category. *Walter A. v. Berg*, No. 25-CV-4720 (SRN/LIB), 2025 WL 3707593, at *4 (D. Minn. Dec. 22, 2025).

The Supreme Court has repeatedly emphasized that historically, the writ of habeas corpus "simply provided a means of contesting the lawfulness of restraint and securing release." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020). Accordingly, a petition for habeas relief "is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). The Supreme Court has also rejected the idea that habeas can provide a petitioner with "an order directing [the Department] to provide him with a new . . . opportunity to apply" for relief from removal. *Thuraissigiam*, 591 U.S. at 118; *see also Foroglou v. Reno*, 241

F.3d 111, 115 (1st Cir. 2001) (rejecting relief under habeas where "it is hard to view the habeas petition to the district court as anything other than an attempt, contrary to section 242(g), to prevent the Attorney General from executing a removal order") (cleaned up).

Petitioner's circumstances are sympathetic, but he has established neither that his detention is unlawful, nor that he is entitled to a TRO here. Therefore, his Emergency Motion for Temporary Restraining Order, like his Petition and his previous Motion for Release or a Bond Hearing, should be denied.

Respectfully submitted,

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