

United States District Court
Eastern District of Michigan

Ahmad Fareez Thabateh,

Petitioner,

Civil No. 25-14018

v.

Sheriff Mat King, in his official
capacity as Warden of the St. Clair
County Jail,

Honorable Robert J. White
Mag. Judge David R. Grand

Respondent.

**Respondent's Response to Petitioner's Emergency Motion to
Compel Respondent to Return Petitioner to this District**

Pursuant to the Court's Order, (ECF No. 11), respondent submits this brief in response to petitioner's emergency motion to compel ICE to return him to this district, (ECF No. 10). As described in more detail in the attached brief, the Court should deny petitioner's motion for preliminary injunctive relief because petitioner was transferred in order to execute a lawful order of removal, which was proper and appropriate under the governing law.

Respectfully submitted,

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Dated: January 16, 2026

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Respondent.

**Respondent's Brief in Support of His Response to Petitioner's
Emergency Motion to Compel Respondent to Return Petitioner to
this District**

Issues Presented

- I. Should the Court deny petitioner's request for an injunction requiring his return to this district when he is unlikely to succeed on the merits of his motion because the Court lacks jurisdiction to grant him the relief he seeks?
- II. Should the Court deny petitioner's motion when he cannot demonstrate irreparable injury?
- III. Do the balance of equities and the public interest weigh against granting plaintiff's motion?

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Introduction

In this suit, petitioner challenges his detention and argues that ICE has taken too long to remove him. Earlier this week, ICE transferred petitioner to another facility to stage his removal. Petitioner's removal is currently scheduled to occur within the next fourteen days. After ICE transferred petitioner, petitioner filed an emergency motion seeking an injunction that would require ICE to return him to this district and to prevent his removal from the United States. The Court should deny petitioner's motion because petitioner's recent transfer was a lawful and necessary step toward his removal and petitioner's transfer does not unfairly prejudice him in this litigation.

Background

Petitioner was born in Ramallah, West Bank, Israel. (Suriano Decl., ECF No. 9-1, PageID.137). In 2023, petitioner became subject to an administratively final order of removal to Israel and the Occupied Territories. (*See id.* at PageID.139; II Order, ECF No. 4-4, PageID.99; BIA Dec., ECF No. 4-5, PageID.102). On June 10, 2025, ICE arrested and detained him to execute his final order of removal. (Suriano Decl., ECF No. 9-1, PageID.140).

On December 12, 2025, petitioner filed this suit alleging that ICE had taken too long to remove him and argued that he must be released from detention because ICE was unlikely to remove him in the reasonably foreseeable future. (*See Pet.*, ECF

No. 1; Am. Pet., ECF No. 4, PageID.69–71). Petitioner did not challenge his order of removal in this case or seek to stay his removal. (*See id.*).

On January 13, 2026, respondent submitted a declaration indicating that petitioner was likely to be removed to Israel in the near future. (*See* Suriano Decl., ECF No. 9-1, PageID.136–141). On the same day, ICE began the process of staging petitioner for removal to Israel and his removal is currently scheduled to occur within fourteen days. (*See id.*; Pet. Mot. to Compel, ECF No. 10, PageID.145).

On January 14, 2026, petitioner filed an emergency motion seeking an injunction requiring ICE to return petitioner to this district and to prevent ICE from executing petitioner’s lawful order of removal. (*See* Pet. Mot. to Compel, ECF No. 10, PageID.144). In his motion, petitioner argues that the All Writs Act grants the Court jurisdiction to enjoin the agency from taking the necessary steps to execute his lawful order of removal. (*See id.*).

Standard of Review

While petitioner styles his motion as a “motion to compel,” he seeks preliminary injunctive relief, so the Court must analyze his petition as one for a preliminary injunction under Rule 65. Under Rule 65, a district court may issue a preliminary injunction, however, an “injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the

circumstances clearly demand it.” *Overstreet v. Lexington–Fayette Urban County Gov’t*, 305 F.3d 566, 573 (6th Cir. 2002); Fed. R. Civ. P. 65.

Argument

“A plaintiff seeking a preliminary injunction 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); *McPherson v. Michigan High Sch. Athletic Ass’n, Inc.*, 119 F.3d 453, 459 (6th Cir. 1997). While the Court must consider each factor, “[i]rreparable harm is the core of the preliminary injunction,” therefore, while “courts ‘balance’ the four factors . . . the existence of an irreparable injury is mandatory.” *EOG Res., Inc. v. Lucky Land Mgmt., LLC*, 134 F.4th 868, 883 (6th Cir. 2025). As described below, petitioner has not met the high burden of demonstrating that he is entitled to preliminary injunctive relief.

A. Petitioner is Unlikely to Succeed on the Merits

Under the REAL ID Act of 2005, federal district courts lack 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.” 8 U.S.C. § 1252(g); *Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018). ICE transferred petitioner to execute his lawful order of

removal. (*See* Suriano Decl., ECF No. 9-1, PageID.140). Accordingly, this Court lacks jurisdiction to issue an injunction that would directly or indirectly prevent ICE from removing petitioner, such as by issuing an injunction that prevents ICE from transferring petitioner to the district from which his plane is scheduled to depart. *See* 8 U.S.C. § 1252(g).

Petitioner cannot rely on the All Writs Act to supply for jurisdiction for his challenge. As an initial matter, Congress specifically prohibited federal district courts from relying on the All Writs Act to exercise jurisdiction over challenges to a noncitizen's removal. *See* 8 U.S.C. § 1252(g) (noting that the All Writs Act, 28 U.S.C. § 1651 could not supply jurisdiction for a challenge to removal in a federal district court). Further, even if § 1252(g) did not specifically preclude petitioner from relying on the All Writs Act, it still would not support his motion. The All Writs Act “is to be used sparingly and only in the most critical and exigent circumstances.” *Wisconsin Right to Life, Inc. v. Fed. Election Comm’n*, 542 U.S. 1305, 1306 (2004) (quotations omitted). It only allows courts to issue injunctions “in aid of” their jurisdiction. *See* 28 U.S.C. § 1651. However, as petitioner acknowledges in his motion, there is no reason to believe that his transfer affects this Court's jurisdiction over his suit. (*See* Pet. Mot., ECF No. 10, PageID.150–155). Instead, the available authority indicates the opposite—petitioner's transfer has no effect on this Court's jurisdiction. *See Ex Parte Endo*, 323 U.S. 283, 285 (1944); *White v. Lamanna*, 42 F.

App'x 670, 671 (6th Cir. 2002) (“Because White filed his petition while he was incarcerated in the Northern District of Ohio, the district court retained jurisdiction over his petition following his transfer.”). Accordingly, the All Writs Act does not provide the Court with authority to grant the petitioner the preliminary injunctive relief he seeks.

Even if the Court had jurisdiction to grant petitioner’s motion, the relief petitioner seeks is unwarranted. Petitioner has known that he is subject to a final order of removal for two years. (*See* Suriano Decl., ECF No. 9-1, PageID.139). He also knows that he was recently detained specifically because the agency intended to remove him in the near future. (*Id.* at PageID.140). And immediately before his transfer, ICE filed a declaration in this case indicating that petitioner was likely to be removed soon. (*See id.* at PageID.139–140). Further, it is well accepted that noncitizens “remaining in detention for extended periods are often transferred several times during their detention” for uncontroversial logistical reasons. *Roman v. Ashcroft*, 340 F.3d 314, 326 (6th Cir. 2003). Given this, there was never any basis for petitioner to allege that his transfer was improper, and he has offered no valid reason for the Court to prevent ICE from carrying out its statutorily mandated duties. *See* 8 U.S.C. § 1231(a).

Petitioner’s argument that he did not receive a travel document is unavailing. As previously noted in this case, petitioner’s removal to Israel does not require a

travel document if the removal is carried out by charter flight. (*See* Suriano Decl., ECF No. 9-1, PageID.140); *see also* 8 C.F.R. § 1240.26(b)(3)(i) (describing procedures when a “travel document is not necessary to return to the alien’s native country or to which country the alien is departing”). Further, the term “travel document” is a generic term that can refer to petitioner’s own passport or any other (paper or electronic) document granting permission to enter the receiving country. 8 C.F.R. § 1240.26(c)(2) (referring to “a passport or other travel documentation”); *See, e.g., United States v. Spector*, 343 U.S. 169, 171 (1952) (“The statutory words ‘travel or other documents necessary to his departure’ will, of course, have different meanings in reference to various countries.”). And, even if a travel document was required, there is no requirement that ICE provide the travel document to petitioner before removal because the travel document is directed to the receiving country, not the noncitizen being removed. Accordingly, petitioner is unlikely to succeed on the merits of his motion because the Court lacks jurisdiction to grant petitioner the injunction he seeks and, even if the Court had jurisdiction, there is no basis in the record supporting petitioner’s request for relief.

B. Petitioner Cannot Establish an Irreparable Injury

A showing of imminent irreparable injury “is indispensable: If the plaintiff isn’t facing imminent and irreparable injury, there’s no need to grant relief *now* as opposed to at the end of the lawsuit.” *D.T. v. Sumner Cnty. Sch.*, 942 F.3d 324, 326–

27 (6th Cir. 2019) (emphasis in original). Thus, while the Court must weigh the other preliminary injunction factors, “even the strongest showing on the other three factors cannot eliminate the irreparable harm requirement.” *Id.* (quotation omitted). In addition, the Supreme Court’s “frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis in original).

Here, petitioner has not submitted any evidence of an imminent irreparable injury that could potentially satisfy Rule 65. As an initial matter, even if it were within the Court’s jurisdiction, petitioner’s upcoming removal does not constitute imminent irreparable injury. *Nken v. Holder*, 556 U.S. 418, 435 (2009) (“It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury.”).

In addition, petitioner’s transfer to another district, in itself, does not prejudice petitioner. Petitioner argues that his return is necessary to preserve the Court’s jurisdiction over this suit but concedes that the transfer has no effect on the Court’s jurisdiction. (Pet. Mot., ECF No. 10, PageID.150–155). This internally inconsistent argument is not sufficient to constitute irreparable injury.

Similarly, petitioner’s transfer does not interfere with his access to the Court or to counsel. This is a simple habeas case that will be resolved based on the answer

to one question: will petitioner be removed soon? (*See* Resp., ECF No. 9, PageID.130–134). Setting aside the fact that petitioner’s current motion to stay his removal demands that his habeas petition be denied, he cannot show that his transfer affects his ability to litigate his (now moot) habeas petition. Petitioner is represented by competent counsel that specializes in immigration law. Petitioner, through his counsel, has filed a petition, an amended petition, and he had the opportunity to supply any evidence relevant to the likelihood of his future removal to the Court with those pleadings. (*See* Pet., ECF No. 1; Am. Pet., ECF No. 4). The only pleading left in this case is petitioner’s reply, which is limited in scope to the issues raised in respondent’s very short response brief. (*See* Resp., ECF No. 9, PageID.128–134). Petitioner offers no explanation of what attorney-client communication is necessary to prepare his reply brief, why that information was not included in his petition or amended petition, or why it cannot be communicated to petitioner’s counsel by phone, by email, or by mail. Accordingly, petitioner cannot demonstrate that he will suffer any meaningful injury if he remains outside of this district.

C. The Balance of Equities and the Public Interest Do Not Weigh in Petitioner’s Favor

The third and fourth preliminary injunction factors “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. The Supreme Court has acknowledged that “[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 permit[s] and prolong[s] a continuing violation of United States law.” *Id.* at 436 (quotation omitted). Further, plaintiff cannot establish the third and fourth preliminary injunction factors simply by alleging that he is being wrongfully denied immigration rights. *See id.* at 435–36.

Here, petitioner has not met his burden of establishing that the balance of equities or the public interest weigh in his favor. Petitioner is subject to a final order of removal and the public has an interest in ICE’s execution of that order. *Nken*, 556 U.S. at 436; (IJ Order, ECF No. 4-4, PageID.99; BIA Dec., ECF No. 4-5, PageID.102). Further, as the current dispute demonstrates, this matter is likely to become moot in the near future. *See Enazeh v. Davis*, 107 F. App’x 489, 491 (6th Cir. 2004) (holding that removal rendered challenge to detention moot). And any order requiring petitioner’s return to this district would only unnecessarily prolong his detention and expend judicial resources that are better spent on active cases and controversies.

Conclusion

Respondent respectfully requests that the Court deny petitioner’s emergency motion to compel ICE to transfer him back to this district.

Respectfully submitted,

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Date: January 16, 2026

Certificate of Service

I hereby certify that on January 16, 2026, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey _____

Zak Toomey

Assistant U.S. Attorney