

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

GUILHERME CAVALCANTE MOL

CIVIL ACTION NO. 1:25-CV-02023

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VERSUS

ELEZAR GARCIA, ET AL

JUDGE TERRY A. DOUGHTY
MAGISTRATE JUDGE
PEREZMONTES

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION AND IN FURTHER
SUPPORT OF MOTION FOR RECONSIDERATION**

Respondents' opposition relies on a narrow and incomplete view of the legal framework governing removal, judicial review, and irreparable harm. The Government characterizes this case as presenting no immediate constitutional concern because Petitioner filed a BIA appeal and may theoretically pursue consular processing in the future. That framing overlooks the mandatory statutory consequences of removal and fails to address the jurisdictional impact that removal would have on these proceedings.

**I. The Automatic Stay Does Not Eliminate Irreparable Harm and Does Not
Preserve Judicial Review**

Respondents' principal argument is that Petitioner is not subject to imminent removal because his appeal before the Board of Immigration Appeals triggers an automatic stay under 8 C.F.R. § 1003.6(a). While that proposition is correct as a procedural matter, it does not resolve the irreparable harm inquiry.

The automatic stay is temporary and entirely dependent on continued agency adjudication. Once the BIA issues a decision—whether through summary affirmance or

dismissal—the stay dissolves immediately by operation of regulation, and Petitioner becomes subject to removal without further notice or opportunity for judicial review.

Accordingly, the automatic stay does not prevent irreparable harm. It merely postpones the point at which removal may occur.

Courts do not assess irreparable harm based on whether the Government has exercised its authority yet, but on whether the threatened injury is legally certain and incapable of being remedied once it occurs. Here, removal remains inevitable absent judicial intervention, and its consequences cannot later be undone.

More significantly, once Petitioner departs or is removed, his BIA appeal is deemed withdrawn under 8 C.F.R. § 1003.4, and his habeas claims become moot because he is no longer in custody. At that point, this Court loses jurisdiction, counsel loses access to her client, and the litigation terminates not through adjudication, but through removal.

A temporary administrative stay does not preserve meaningful judicial review where the Government retains the unilateral ability to extinguish jurisdiction through enforcement action.

II. The Government’s “Consular Processing” Theory Does NOT Account For Mandatory Statutory Bars

Respondents further argue that removal does not constitute irreparable harm because Petitioner may still pursue immigration benefits through consular processing. That position does not account for the statutory inadmissibility consequences triggered by departure.

Petitioner accrued more than one year of unlawful presence following the expiration of his authorized stay in September 2018. Under INA § 212(a)(9)(B)(i)(II), departure or removal

now triggers a mandatory ten-year bar to admissibility. This bar applies automatically by statute and renders Petitioner inadmissible for a full decade.

As a result, Petitioner cannot lawfully return to the United States during that period unless he obtains a waiver under INA § 212(a)(9)(B)(v). Such waivers are discretionary, require a showing of extreme hardship to a qualifying relative, and are subject to lengthy years of adjudication with no guarantee of approval.

Removal therefore does not preserve Petitioner's ability to pursue relief. It imposes significant statutory barriers that fundamentally alter his legal position.

Respondents' reliance on 8 C.F.R. § 204.2(a)(3) addresses only the procedural mechanics of petition processing and does not eliminate grounds of inadmissibility or confer any right of admission. An approved I-130 petition does not authorize entry, does not grant lawful status, and does not overcome statutory bars.

III. Removal Would Moot This Case and Extinguish This Court's Jurisdiction

Respondents suggest that Petitioner could continue litigating from abroad. That position is inconsistent with the governing jurisdictional framework.

Once removed, Petitioner's appeal is withdrawn by regulation, and his habeas claims become moot because he is no longer in custody. This Court loses jurisdiction not because the claims lack merit, but because the factual predicate for jurisdiction no longer exists.

The Supreme Court has recognized that removal during pending judicial proceedings constitutes irreparable harm where it prevents meaningful judicial review and imposes consequences that cannot later be remedied. See *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Allowing removal under these circumstances would effectively permit the Executive Branch to determine the lifespan of federal jurisdiction through enforcement timing, a result inconsistent with the structure of Article III.

IV. Section 1252(g) Does Not Strip This Court of Jurisdiction

Respondents invoke 8 U.S.C. § 1252(g) as a jurisdictional bar. That reliance is misplaced. Section 1252(g) limits judicial review of certain discretionary enforcement decisions. It does not preclude habeas jurisdiction where the relief sought is not review of a removal order, but protection of constitutional access to the courts and prevention of jurisdictional mootness.

This case does not challenge the validity of a removal order. It challenges unlawful custody and seeks to preserve the Court's ability to adjudicate pending constitutional claims. The Supreme Court has repeatedly rejected attempts to weaponize § 1252(g) to extinguish habeas jurisdiction in precisely this manner. See *Jennings v. Rodriguez*, 583 U.S. 131 (2018); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

V. The Government's Framing Confirms Irreparable Harm

By its own logic, Respondents concede that Petitioner will be:

1. Separated from his U.S. citizen spouse.
2. Barred from reentry for ten years.
3. Forced to seek discretionary waivers from abroad.
4. Unable to return to litigate his claims.
5. Deprived of federal judicial review.

That is not speculative harm. It is legal certainty.

Removal in this posture is not neutral. It is legally terminal. It withdraws Petitioner's appeal, triggers statutory inadmissibility, deprives this Court of jurisdiction, and permanently forecloses meaningful judicial review.

Once removed, there is no mechanism to restore the status quo. No later ruling by this Court could cure the injury. The harm would be complete, structural, and irreversible.

VI. Judicial Intervention Is Required to Preserve Jurisdiction

Respondents effectively ask the Court to defer action because removal has not yet occurred. But irreparable harm analysis does not require courts to wait until jurisdiction is destroyed before acting.

The automatic stay does not preserve judicial authority. The pending I-130 does not preserve admissibility. Consular processing does not preserve access to the courts.

Only judicial intervention preserves jurisdiction. And once jurisdiction is lost, it cannot be recovered.

Respectfully submitted,

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