District Judge Kimberly K. Evanson

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

WILFREDO CASTILLO RIVAS, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:26-cv-00134-KKE FEDERAL RESPONDENTS'[1] OPPOSITION TO PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND STAY OF REMOVAL **Noted for consideration: February 2, 2026**

I. INTRODUCTION

This Court should deny Petitioner Wilfredo Castillo Rivas' motion for a temporary restraining order[2] ("TRO") staying his removal or transfer to another facility. Dkt. 3, TRO Mot. at 3. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner, a Venezuelan citizen, subject to a final order of removal, pursuant to 8 U.S.C. § 1231(a).

Petitioner has been ordered removed from the United States, but must withhold from removing him to Venezuela. For approximately a month, Petitioner and his immigration legal counsel have been aware of the Government's intent to remove him to Mexico. TRO, Exh. 1.

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.
[2] Although not labeled a temporary restraining order, the Emergency Motion for Order Preventing Transfer During Pendency of Petition is essentially a motion for a temporary restraining order.

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Despite this, Petitioner has not filed a motion to reopen immigration proceedings to assert his fear of return before an immigration judge. Petitioner has claimed fear of removal to Mexico. However, an asylum officer interviewed Petitioner and determined that he would not be persecuted or tortured. Dkt. 15, Exh. F.

Petitioner asserts that the TRO is necessary to "facilitate this Court's jurisdiction over the pending petition and to prevent the sham removal of Mr. Castillo Rivas to a country that will refuse him at the border…." TRO at 3. Instead of asking this Court to maintain jurisdiction in the event that Petitioner is not removed to Mexico, Petitioner is asking the court to stop ICE from executing a valid removal order, which it does not have jurisdiction to do. 8 U.S.C. § 1252(g).

II. FACTUAL BACKGROUND

A more detailed factual background is included in Federal Respondents' Return Memorandum. Dkt. 13. On July 18, 2025, Petitioner was ordered removed from the United States, but removal to Venezuela was withheld. Dkt. 15, Exh. D. On December 12, 2025, ICE provided Petitioner with a notice of DHS intent to remove Petitioner to Mexico. Dkt. 15, Exh. E. Petitioner notified his immigration attorney and claimed fear of return. TRO, Exh. 1.

On January 5, 2026, Petitioner was interviewed by an asylum officer regarding his fear of return to Mexico. Dkt. 15, Exh. F. The asylum officer found more likely than not that Petitioner would not be persecuted or tortured in Mexico. *Id.*

Mexico is receiving citizens of Venezuela and ICE believes that it will accept Petitioner. Dkt. 14. ICE intends to remove Petitioner to Mexico. *Id.* ICE is currently stopped from doing so by order of this Court. Dkt. 8.

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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 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"

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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.

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,

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adjudicate cases, or *execute* removal orders.'" 525 U.S. at 482 (original emphasis). Petitioner is subject to a 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).

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

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B. Petitioner is unlikely to succeed on the merits.

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241. Petitioner has not shown that here.

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

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Section 1231(a)(6) authorizes the U.S. Department of Homeland Security ("DHS") to continue detention of noncitizens after the expiration of the removal period. Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.*, at 701.
Petitioner is subject to a final order of removal. Dkt. 15, Exh. D. His order of removal became final on July 18, 2025. *Id.* Absent this Court's provisional order staying Petitioner's removal

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(Dkt. No. 8), Petitioner's removal to Mexico is likely to occur within the reasonably foreseeable future. Dkt. 14.

Finally, Petitioner's assertions concerning the procedure for third country removal are not applicable. Petitioner has been on notice of ICE's intent to remove him to Mexico since December 12, 2025. Despite this, he still has not made any attempt to reopen his removal proceedings and file an application explaining the basis of his fear of being removed to Mexico.

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 House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders). Furthermore, the immigration laws and regulations provide for the relief sought here through the administrative process. This public interest outweighs Petitioner's private interest here. Petitioner has received sufficient process.

Accordingly, this Court should deny his TRO Motion.

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V. CONCLUSION

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

DATED this 28th day of January, 2025.

Respectfully submitted,

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I certify that this memorandum contains 1,919 words, in compliance with the Local Civil Rules.

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