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April 27, 2026

The Honorable John L. Sinatra, Jr.
United States District Judge
Robert H. Jackson United States Courthouse
2 Niagara Square
Buffalo, New York 14202

Re: A.J. v. Marich, et al.
26-CV-00324-JLS

Dear Judge Sinatra:

Please allow this letter to serve as Respondents' opposition to any stay being granted in this matter.

Petitioner essentially seeks a stay pending a decision by the Second Circuit, arguing that judicial and party resources will be conserved. But it is unclear when the Second Circuit will issue its decision or whether it would side with or against the government's argument, undercutting Petitioner's argument.

Typically, when considering to grant a stay pending appeal, a district court looks to four factors: "(1) whether the petitioner is likely to prevail on the merits of his appeal, (2) whether, without a stay, the petitioner will be irreparably injured, (3) whether issuance of a stay will substantially harm other parties interested in the proceedings, and (4) wherein lies the public interest." *Brabson v. The Friendship House of W.. New York, Inc.*, No. 94-CV-0834 E, 2000 WL 1335745, at *1 (W.D.N.Y. Sept. 6, 2000).

In this case, the first factor is purely speculative. Two appellate courts have sided with the government on the issue, but oral argument seemed to suggest that the Second Circuit would hold against the government. This factor should be deemed neutral.

With regard to the second factor, there is no injury to the Petitioner because this Court has already held that detention under § 1225(b) is lawful, and thus he would not be injured by the lawful exercise of government authority. Thus, this factor weighs against granting a stay.

By contrast, the Respondents are injured by having their authority to detain Petitioner challenged and that challenge remaining unresolved. Thus, the third factor also weighs against a stay.

Lastly, the lack of clarity as to Petitioner's detention status necessarily engenders the public interest in the lawful execution of immigration laws, and thus this factor also weighs against a stay. The public is also served by timely issuance of court decisions, further weighing against the grant of stay.

In sum, Petitioner seeks a stay with the hopes that the Second Circuit will rule in his favor on a shared issue. Granting a stay in this case, and others like it, would essentially bring adjudication of *Hurtado* matters pending before this Court to a halt.[1] Thus, the request for a stay should be denied.

Respectfully submitted,

MICHAEL DIGIACOMO
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BY: /s/ Adam A. Khalil
Assistant United States Attorney

[1] An informal count reveals that approximately 75 cases sharing this issue of law are currently pending in this District.