

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

JUANIER DIAZ HERNANDEZ
Petitioner,

v.

SECRETARY MARKWAYNE MULLIN, ET AL.,
Respondents.

Case No. 3:26-cv-1016-WWB-LLL

**FEDERAL RESPONDENTS' RESPONSE TO RENEWED MOTION FOR TEMPORARY
RESTRAINING ORDER, ECF No. 9.**

Petitioner Juanier Diaz Hernandez is a citizen and national of Cuba who challenges his ongoing detention. See Petition for Writ of Habeas Corpus, ECF No. 1. Petitioner previously sought—but was denied—a temporary restraining order (“TRO”). ECF Nos. 2, 5. On May 6, 2026, this Court issued an order to show cause why the petition should not be granted. ECF No. 5. The government responded on June 4, 2026—ECF No. 8—and Petitioner submitted a reply on June 9, 2026. ECF No. 9. Within the reply, Petitioner renewed his motion for a temporary restraining order. *Id.* Federal Respondents hereby respond specifically to Petitioner’s request for a TRO.

LEGAL STANDARD

Preliminary injunctive relief—whether through a temporary restraining order or 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). The standard for obtaining either form relief—in the traditional sense—is the same. See *Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001) (per curiam); *Windsor v. United States*, 379 F. App'x 912, 916-17 (11th Cir. 2010) (per curiam). A movant seeking a traditional preliminary injunction or a TRO must show: (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998) (citations omitted); see also *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995) (per curiam). “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). Importantly, the party seeking injunctive relief bears the burden of persuasion as to each of the required elements. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000); *Bongiovanni v. Austin*, No. 3:22-cv-237-MMH-MCR, 2022 WL 1642158, at *5 (M.D. Fla. May 24, 2022).

Discussion

The instant motion should be denied because Petitioner is not likely to succeed on the merits of his case. As discussed in Federal Respondents’ response to the habeas petition—ECF No. 8—Petitioner has been detained for the purpose

of executing his order of removal which remains administratively final at this time. Though Federal Respondents understand that Local Rule 3.01(h) prohibits incorporation by reference, they respectfully request relief from that rule in the interest of judicial efficiency as in seeking a TRO, Petitioner must demonstrate a substantial likelihood of success on the merits. As the merits of the claims have already been briefed in full at ECF No. 8, Federal Respondents aver that it is indeed appropriate for this Court to consider those arguments in determining whether a TRO is appropriate here.

In addition to the arguments raised in ECF No. 8, Federal Respondents address two points newly raised in Petitioner's most recent TRO motion.

I. Petitioner's Removal Order is Enforceable Notwithstanding His Seeking Review of the Immigration Court's Denial of His Motion to Reopen.

Petitioner asserts that the government omitted a material fact in asserting that there is no impediment to execution of his removal order. ECF No. 9, p. 2. Not so. First, the EOIR case information page submitted as Exhibit C to ECF No. 8 reflected no pending appeal. Still, the government made sure to state that Petitioner had represented that he was seeking review of the immigration court's denial of his motion to reopen given that this information seemingly differed from EOIR's website. See ECF No. 8, p. 2.

Notwithstanding the pendency of Petitioner's challenge with the Board of Immigration Appeals ("BIA"), his order remains administratively final at this time. There are certain circumstances under which an order of removal is automatically

stayed with a BIA filing. For example, auto-stay is implicated where an alien has filed an appeal on the merits of a case and the BIA is actively adjudicating the appeal. See 8 C.F.R. § 1003.6(a). By contrast, auto-stay is not implicated where—as here—the immigration judge has denied a motion to reopen or reconsider. *Id.* § 1003.6(b). In other words, the distinction between what is being appealed is significant. Petitioner is not appealing the denial of an immigration benefit but rather the court’s decision not to reopen proceedings under which he was already ordered removed. While the BIA still has the authority to issue a stay, Petitioner is not entitled to one as of right and furthermore he has presented no evidence that he has even sought a discretionary stay before the BIA. See EOIR Policy Manual, Part III – Board Practice Manual, 5.3 – Discretionary Stays at Part (c), *available at* <https://www.justice.gov/eoir/policy-manual-eoir/part-III/bia/chapter-5-3> (last accessed June 9, 2026) (providing that “Parties should submit a request for a discretionary stay by filing a written motion.”).

Because Petitioner has a final order and challenges only the immigration court’s decision not to reopen his proceedings, no automatic stay is implicated, and no stay motion is even pending, there is no impediment to his removal pursuant to that valid order at this time. For this reason, Petitioner’s claims related to his challenge to the finality of his removal order also fail. See ECF No. 9, p. 2.

II. Neither Hernandez-Alvarez nor Carruyo-Serrudo Are Relevant.

Petitioner asserts that the Eleventh Circuit’s recent decision in *Hernandez-Alvarez v. Warden, Florida Soft Side South, et al.*, 175 F.4th 1258 (11th Cir. 2026)

either directly controls or strongly supports the relief requested. See ECF No. 9, p. 1. He fails to show how so where *Hernandez-Alvarez* concerns detention authority over aliens in removal proceedings while Petitioner is subject to a final order of removal. Because his detention is governed by 8 U.S.C. § 1231, the statutory framework discussed in *Hernandez Alvarez* is inapposite. Petitioner's reliance on *Carruyo-Serrudo v. Blanche*, No. 3:26-cv-559-JEP-SJH (M.D. Fla. May 12, 2026) is no more persuasive where it also concerns detention of pre-final order aliens.

Conclusion

For the foregoing reasons Petitioner cannot demonstrate substantial likelihood of success on the merits of his Petition and his TRO motion should be denied.

Date: June 9, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/Amanda Saylor
Amanda Saylor
Assistant United States Attorney
Lead Counsel for Federal Respondents
Florida Bar No. 1031480
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6020
Facsimile: (813) 274-6198
Email: Amanda.Saylor@usdoj.gov

A.I. CERTIFICATION

The undersigned hereby certifies that no generative AI was used in the drafting and preparation of the foregoing filing.

By: /s/Amanda Saylor
Amanda Saylor
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will furnish copies of these documents to all registered counsel of record.

Dated: June 9, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney