

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JORGE HUMBERTO ALVAREZ ORTIZ,

Petitioner,

v.

25-CV-00960 LJV

JOSEPH FREDEN, in his official capacity as Deputy Field
Office Director, Buffalo Field Office, U.S. Immigration &
Customs Enforcement,

STEVEN KURZDORFER, In his official capacity as Field
Office Director, Buffalo Field Office, U.S. Immigration &
Customs Enforcement,

TODD LYONS, In his official capacity as Acting Director,
U.S. Immigration and Customs Enforcement,

KRISTI NOEM,
In her official capacity as Secretary of Homeland Security,

Respondents.¹

**MEMNORANDUM OF LAW IN OPPOSITION TO PETITIONER'S EMERGENCY
MOTION SEEKING A TEMPORARY RESTRAINING ORDER**

¹ The caption has been altered to reflect that Mr. Freden is the Deputy Field Office Director and that Mr. Kurzdorfer is the Field Office Director (not acting).

Petitioner Jorge Humberto Alvarez Ortiz seeks an emergency temporary restraining order (“TRO”) enjoining the Respondents from transferring him outside of the Western District of New York and preventing his removal until the underlying Petition is decided. ECF No. 2. Because this Court lacks the authority to stay removal, and because this Court has correctly found in the past that there is no reason to encroach upon ICE’s authority to detain aliens in appropriate places of detention, and because Ortiz has not even made out a *prima facie* case showing his entitlement to a TRO, the motion should be denied in its entirety.

Initially, it must be noted that this Court lacks jurisdiction to stay removal. In addition to the unequivocally clear language of the jurisdiction-stripping provision within the Immigration and Nationality Act itself, nearly every currently-sitting judge in this district has said as much. *See* 8 U.S.C. § 1252(g) (“[N]o 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.”) (boldface added); *see also* *Cesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *7 (W.D.N.Y. May 2, 2025) (“And ‘because district courts have no jurisdiction to review final orders of removal, they have no jurisdiction to review requests for stays of removal.’”) (quoting now-retired Judge Larimer in *Al-Garidi v. Holder*, 2009 WL 1439216, at *1 (W.D.N.Y. May 15, 2009)); *Fulton v. Mayorkas*, No. 25-CV-63 (JLS), 2025 WL 296051, at *4 (W.D.N.Y. Jan. 24, 2025) (this Court holding that “[b]ecause his challenges arise from Respondents’ action to execute his removal order, Section 1252(g) divests the Court of jurisdiction to grant the relief sought.”) (cleaned up); *K.K. v. Garland*, No. 23-CV-6281-FPG, 2025 WL 274431, at *2 (W.D.N.Y. Jan. 23, 2025),

appeal dismissed as moot sub nom. *K.K. v. Bondi*, No. 25-190, 2025 WL 1233307 (2d Cir. Apr. 8, 2025) (“[T]he Court does not have jurisdiction over Petitioner's claims related to a stay of removal.”); *Diakhate v. Casey*, No. 6:23-CV-06736 EAW, 2024 WL 4882264, at *4 (W.D.N.Y. Nov. 25, 2024) (“[N]umerous courts in this circuit and others’ have concluded ‘that the plain meaning of Section 1252 deprives federal district courts of jurisdiction over requests to stay orders of removal.’”) (quoting *Ahmed v. Barr*, No. 20-CV-395 (JLS), 2020 WL 2395694, at *2 (W.D.N.Y. May 12, 2020); alteration in original); *Tewodros v. Garland*, No. 20-CV-7022 CJS, 2021 WL 1534731, at *3 (W.D.N.Y. Apr. 19, 2021); *Enwonuw v. Chertoff*, No. 06-CV-0834SR, 2006 WL 3833481, at *2 (W.D.N.Y. Dec. 22, 2006) (Judge Arcara holding that district courts lack jurisdiction to stay removal).

Similarly, to the extent Ortiz seeks an order enjoining his transfer outside of the Western District of New York, this Court has explained why such relief is not required:

This Court agrees that § 1231(g)(1) provides DHS with broad authority to decide where an alien is detained. But this Court need not speculate about the scope of that authority because “[i]t is well established that jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change.” See *Santillanes v. U.S. Parole Comm’n*, 754 F.2d 887, 888 (10th Cir. 1985). In other words, regardless of where Singh is housed, this Court retains jurisdiction over his habeas petition. So there is no need to interfere with DHS's authority to “arrange for appropriate places of detention” under 8 U.S.C. § 1231(g)(1).

Singh v. Whitaker, 362 F. Supp. 3d 93, 106 (W.D.N.Y. 2019); see *Shaikh v. Barr*, No. 20-CV-6300 CJS, 2020 WL 7021443, at *3 (W.D.N.Y. Nov. 30, 2020) (Judge Siragusa citing *Singh* and gathering cases); *Dorval v. Barr*, 414 F. Supp. 3d 386, 396 (W.D.N.Y. 2019) (Judge Telesca citing *Singh*).

Lastly, even ignoring the wealth of caselaw regarding the lack of jurisdiction to enjoin removal and the absence of any *need* to enjoin transfer, Ortiz has not set forth a *prima*

facie case of his entitlement to a TRO. For example, this Court has held that “‘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.’” *Jones v. Wolf*, 467 F. Supp. 3d 74, 81 (W.D.N.Y. 2020) (quoting *Trump v. Deutsche Bank AG*, 943 F.3d 627, 640 (2d Cir. 2019), *vacated and remanded sub nom. Trump v. Mazars USA, LLP*, 591 U.S. 848 (2020)). While Ortiz has made reference to suffering irreparable harm if he is transferred, he has not even addressed the other elements required. As such, the motion for a TRO should be denied in any event.

Respectfully submitted,

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