

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

DIEGO ALBERTO HERNANDEZ GARCIA,)
)
 Petitioner,)
)
 v.) Case No. 3:25-cv-605-DCLC-JEM
)
 UNITED STATES DEPARTMENT OF)
 HOMELAND SECURITY et al.,)
)
 Respondents.)

MOTION TO RECONSIDER

The United States, by and through Francis M. Hamilton III, United States Attorney for the Eastern District of Tennessee, and on behalf of Federal Respondents United States Department of Homeland Security (“DHS”), Scott Ladwig, Kristi Noem, Pamela Bondi, Executive Office for Immigration Review (“EOIR”), and Todd Lyons¹ moves the Court to reconsider its prior Order [Doc. 4] to allow the United States Immigration and Custom’s Enforcement Services (“ICE”) to continue to hold Petitioner pending further removal proceedings.

On December 12, 2025, the United States filed its Motion to Stay Release Pending Forthcoming Motion to Reconsider (“Motion to Stay Release”). In the Motion to Stay Release, the United States provided the Court with documentation that Petitioner’s deferred-action status has been terminated. (Termination Notice, Doc. 6-1.) Recognizing the critical nature the

¹ This motion is filed on behalf of Federal Respondents DHS, Scott Ladwig, Kristi Noem, Pamela Bondi, Todd Lyons, and EOIR. 28 U.S.C. § 517 allows the United States Attorney to appear in court to attend to the United States’ interests. Consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States’ interests to the extent that the petition also names Paul Cooper, Warden of the Roger D. Wilson Detention Facility, as a respondent.

deferred-action status of Petitioner played in the Court's analysis, the Court granted the United States Motion to Stay Release and vacated the portion of its Memorandum Opinion and Order [Doc. 4] which ordered the Petitioner's immediate release from ICE custody. (*See* Memorandum Opinion and Order, Doc. 7.) The United States files this Motion to Reconsider, as explained in its Motion to Stay Release, to more fully explain why, with the termination of Petitioner's deferred-action status, continued detention pending the Court's disposition of this case on the merits is appropriate and supported by the law.

ARGUMENT

A. PETITIONER IS LAWFULLY DETAINED PURSUANT TO 8 U.S.C. § 1231.

ICE's detention authority in this case is pursuant to 8 U.S.C. § 1231, which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days—this is known as the “removal period.” During the removal period, § 1231(a)(2) commands that ICE “shall detain” the final order alien. Moreover, under Section 1231(a)(6), ICE may continue detention beyond the initial removal period for three categories of individuals:

- Those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182;
- Those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or
- Those whom immigration authorities have determined to be a risk to the community or “unlikely to comply with the order of removal.”

There can be no reasonable dispute that Petitioner is subject to a final order of removal. *See* Petition for Writ of Habeas Corpus, Doc. 1, at ¶ 17 (“Petitioner [has been] ordered removed from the United States to El Salvador.”); *see also*, September 8, 2016 Order of the Immigration

Judge attached as Exhibit 1 (ordering Petitioner's removal.). Although Petitioner was later granted deferred-action status, that act of prosecutorial discretion merely delayed – temporarily – enforcement of the removal order and was subject to early termination by USCIS at its discretion. *See* Doc. 1-1 (stating, in part, “[d]eferred action is an act of administrative convenience to the government which gives some individuals lower priority for removal from the United States for a specific period of time. Your grant of deferred action will remain in effect for a period of four years from the date of this notice, *unless terminated earlier by USCIS.*”) (*emphasis added*). Indeed, USCIS terminated Petitioner's deferred action status on December 11, 2025 (Doc. 6-1). As such, Petitioner is now subject to deportation, as even Petitioner acknowledges in his Petition for Writ of Habeas Corpus. (*See* Doc. 1, at ¶ 36. (“*Unless deferred action is terminated*, deferred action prevents immigration authorities from physically removing a noncitizen from the United States.”) (*emphasis added*)). And because the Petitioner's removal order is administratively final and, with the termination of Petitioner's deferred action status, is subject to enforcement, Petitioner's detention is lawful pending the administrative steps necessary to effectuate his removal. 8 U.S.C. § 1231(a)(1), (a)(2), (a)(6).

B. 8 U.S.C. § 1252(g) BARS THE RELIEF REQUESTED BY PETITIONER.

Moreover, the United States respectfully submits that Petitioner's claims are barred from review because they relate to the commencement of proceedings and adjudication of cases as prohibited by 8 U.S.C. § 1252(g). Section 1252(g) provides that “notwithstanding any other provision of law (statutory or nonstatutory) . . . 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 . . . execute removal orders against any alien,” except through a petition for review from a final order of removal filed in a court of appeals.

In enacting 8 U.S.C. § 1252(g) through the REAL ID Act, “Congress decided that, as a matter of public policy, [federal courts] do not have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order.” *Abdugoniev v. Bondi*, No. 1:25-CV-133, 2025 WL 2772934, at *2 (S.D. Ohio Sept. 26, 2025) (citing *Rranxburgaj v. Wolf*, 825 F. App’x 278, 283 (6th Cir. 2020). “The plain language of 8 U.S.C. § 1252(g) therefore limits jurisdiction as it relates to claims arising from such execution of removal orders — even if federal question jurisdiction or mandamus jurisdiction would otherwise be proper.” *Id. see also Elgharib v. Napolitano*, 600 F.3d 597, 607 (6th Cir. 2010). Thus, Section 1252(g) prohibits district courts from hearing challenges to decisions and actions about whether and when to commence removal proceedings. “Indeed, the Sixth Circuit has made clear that the Court lacks jurisdiction to enjoin the execution of a removal order.” *Id. see Moussa v. Jenifer*, 389 F.3d 550, 554 (6th Cir. 2004); *Hamama v. Homan*, 912 F.3d 869, 874 (6th Cir. 2018).²

A plain reading of the Petition for Writ of Habeas Corpus [Doc. 1] and the Petition for Emergency Motion for a Stay of Removal [Doc. 2] clearly indicate that Petitioner is challenging his removal. As such, it falls squarely into Section 1252(g)’s prohibition on district courts hearing challenges to decisions and actions about whether and when to

² Since the Sixth Circuit’s decision in *Hamama v. Homan*, 912 F.3d 869, 874 (6th Cir. 2018), district courts have consistently applied *Hamama* as a bar to judicial review of the execution of removal orders. *See, e.g., Al Shimary v. Rayborn*, No. 2:24-CV-11646, 2024 WL 3625169, at *2 (E.D. Mich. July 31, 2024); *Kazan v. Sessions*, No. 18-CV-11750, 2023 WL 2347069, at *2-3 (E.D. Mich. Mar. 3, 2023); *Portillo v. Wolf*, No. 2:20-CV-12730, 2020 WL 6130880, at *2 (E.D. Mich. Oct. 19, 2020); *El Moustrah v. Barr*, No. 19-CV-13549, 2020 WL 1473305, at *2 (E.D. Mich. Mar. 25, 2020); *Mohan Karki, et al. v. Richard Jones, et al.*, No. 25-CV-281, 2025 WL 1638070, at *7 (S.D. Ohio June 9, 2025). Not to mention, the Sixth Circuit has reaffirmed its reliance on *Hamama*. *See, e.g., Rranxburgaj v. Wolf*, 825 F. App’x 278, 282 (6th Cir. 2020).

commence removal proceedings. Importantly, due to the recency of Petitioner's detention, Petitioner has not and can not raise any habeas issues related to indefinite detention following the execution of a removal order. *See, e.g., Moussa*, 389 F.3d at 554 (*citing Zadvydas v. Davis*, 533 U.S. 678 (2001)); *see also Al Shimary v. Rayborn*, No. 2:24-CV-11646, 2024 WL 3625169, at *2 (E.D. Mich. July 31, 2024) (denying stay of removal on jurisdictional grounds but allowing detention-based claim to proceed).

CONCLUSION

For the foregoing reasons, the United States respectfully requests an Order confirming ICE's authority to hold Petitioner in detention pending the outcome of this case, and denying Petitioner's Emergency Motion for Stay. Further, the United States respectfully suggests that the Petition [Doc. 1] is subject to dismissal for lack of jurisdiction under 8 U.S.C. § 1252(g).

Respectfully submitted,

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