

United States District Court
Eastern District of Michigan

DARYNEL GERARDO MEDINA
LOPEZ,

Petitioner,

Civil No. 26-10784

v.

Honorable F. Kay Behm
Mag. Judge Anthony P. Patti

KEVIN RAYCRAFT, Acting Field
Office Director of Enforcement and
Removal Operations, Detroit Field
Office, Immigration and Customs
Enforcement; et al.,

Respondents.

**Respondents' Motion to Vacate the Court's
Temporary Restraining Order**

For the reasons described in the attached brief, respondents move to vacate the Court's order enjoining the agency from removing petitioner from the United States or transferring petitioner outside of the State of Michigan because the Court's order lacked jurisdiction and was unwarranted under the circumstances.

Pursuant to Local Civil Rule 7.1, counsel for respondents sought concurrence in this motion, but petitioner did not concur.

Respectfully submitted,

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Dated: March 23, 2026

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**Respondents' Brief in Support of Their Motion to Vacate the
Court's Temporary Restraining Order**

Issue Presented

Should the Court vacate its order enjoining petitioner's removal from the United States and/or transfer out of Michigan when the Court lacked jurisdiction to stay petitioner's removal and the Court's order was unwarranted under the circumstances?

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Introduction

Petitioner is a noncitizen subject to a final order of removal. In this suit, he challenges his detention by alleging that the agency is taking too long to remove him. However, he also sought an emergency stay of his removal, which the Court granted. Since then, petitioner has moved for a stay of his removal in the Board of Immigration Appeals and the Board is currently considering that motion. The Court should vacate its order because it lacked jurisdiction to stay petitioner's removal and allow the Board of Immigration Appeals, which does have jurisdiction to stay petitioner's removal, to determine whether a stay is appropriate in petitioner's case.

Background

Petitioner Darynel Gerardo Medina Lopez is a noncitizen who was ordered removed by an immigration judge in 2017. (*See* Pet., ECF No. 1, PageID.2). Petitioner appealed that decision, but the Board of Immigration Appeals denied his appeal in 2018. (*See id.*). Petitioner has been subject to an administratively final order of removal for the past eight years. (*See id.*). In March 2026, local law enforcement officials encountered petitioner at a traffic stop and contacted immigration officials who took petitioner into custody at that time. (*See* Hughley Decl., ECF No. 7-2, PageID.81).

Immediately after petitioner's arrest, he filed a motion to re-open his immigration proceedings with the Board of Immigration Appeals. (*See* Pet., ECF

No. 1, PageID.2). Petitioner's motion to re-open does not affect the finality of his order of removal or stay his removal. (*See* Hughley Decl., ECF No. 7-2, PageID.81); 8 C.F.R. § 1003.23(b)(1)(v). The Board of Immigration Appeals has jurisdiction to stay a noncitizen's removal while it considers a motion to re-open. *See* 8 C.F.R. §§ 241.6(b), (c), 1003.23(b)(1)(v). However, petitioner did not move to stay his removal in the Board of Immigration Appeals when he filed his motion to re-open. (*See* Hughley Decl., ECF No. 7-2, PageID.81).

On March 9, 2026, petitioner sought a writ of habeas corpus in federal court. (*See* Pet., ECF No. 1). The grounds for the petition were that petitioner's detention violated his Fifth Amendment due process rights under *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), which only applies when ICE takes too long to remove a noncitizen subject to a final order of removal. (*See* Pet., ECF No. 1, PageID.14). Further, in his petition, petitioner indicated that he would file a motion to stay his removal in the BIA, but acknowledged that, because his order of removal had not yet been stayed, "ICE may execute that order at any time." (*See id.* at PageID.2).

On March 12, 2026, ICE transferred petitioner to a detention facility in Texas to facilitate his removal from the United States. (*See* Hughley Decl., ECF No. 7-2, PageID.81). On March 13, 2026, petitioner filed an emergency motion to stay his removal in this Court. (*See* Mot. for TRO, ECF No. 4, PageID.23). The Court granted the motion the same day and ordered ICE to immediately return petitioner to

Michigan. (*See* Order, ECF No. 5; Order, ECF No. 6). ICE returned petitioner to Michigan on March 15, 2026, and he is currently detained in Calhoun County, Michigan. (*See* Order, ECF No. 6; I-830, ECF No. 7-4, PageID.86).

On March 20, 2026, petitioner filed an emergency motion to stay his removal in the Board of Immigration Appeals. (*See* BIA Mot. to Stay, ECF No. 7-5, PageID.87). The Board has not yet ruled on that motion.

Argument

For the reasons explained below, the Court should vacate its order enjoining petitioner's removal because the Court lacks jurisdiction to stay a noncitizen's removal. Further, the Court should vacate its order enjoining petitioner's transfer because it may interfere with his removal and because the injunction is not necessary to preserve the Court's jurisdiction over petitioner's habeas suit.

I. The Court Should Vacate its Order Enjoining Petitioner's Removal

Noncitizens subject to administratively final orders of removal may move to re-open their removal proceedings in the Board of Immigration Appeals. 8 C.F.R. § 1003.23. A motion to re-open does not automatically stay a noncitizen's removal. 8 C.F.R. § 1003.23(b)(1)(v). However, the Board has jurisdiction to stay a noncitizen's removal if the noncitizen promptly moves for a stay. *See* 8 C.F.R. §§ 241.6(b), (c), 1003.23(b)(v); *see also Matter of Boulama*, 2023 WL 9658707, at *1 n.1 (BIA Aug. 2, 2023) (noting that BIA had granted stay of removal for consideration of motion

to re-open); *Matter of McDonald*, 2023 WL 7014309, at *1 (BIA Feb. 7, 2023) (BIA granting motion to stay removal).

In addition, with the REAL ID Act of 2005, Congress granted the U.S. Courts of Appeals exclusive jurisdiction to hear motions to stay removals in federal court. *See* REAL ID Act of 2005, H.R. 1268, 109th Cong. (2005) (enacted), Pub. L. No. 109-13, Div. B., 119 Stat. 231, 8 U.S.C. § 1252(a)(5). In particular, the Act establishes that “a petition for review filed with an appropriate court of appeals in accordance with this section shall be the *sole and exclusive* means for judicial review of an order of removal.” 8 U.S.C. § 1252(a)(5) (emphasis added).

Consistent with this duty, the courts of appeals have developed special procedures for hearing motions to stay removals in immigration cases on an expedited basis. *See* 6th Cir. R. 18(b). And each court of appeals considers emergency motions to stay removal several times per month, at a minimum. *See, e.g., Perez-Perez v. Bondi*, No. 25-3146 (6th Cir.), ECF No. 14 (granting emergency stay of removal); *Alanis v. Bondi*, No. 25-3872 (6th Cir.), ECF No. 7 (granting temporary stay of removal so court could consider emergency stay of removal); *Arateco-Munoz v. Bondi*, No. 25-3721 (6th Cir.), ECF No. 8 (same); *Garcia v. Bondi*, No. 25-3666 (6th Cir.), ECF No. 12) (same).

In contrast, federal district courts have no jurisdiction to stay a noncitizen’s removal. With the REAL ID Act of 2005, Congress stripped federal district courts

of any jurisdiction whatsoever 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.” 8 U.S.C. § 1252(g). This jurisdiction stripping provision explicitly addresses the Habeas Act, 28 U.S.C. § 2241, the Mandamus Act, 28 U.S.C. § 1361, and the All Writs Act, 28 U.S.C. § 1651, and unequivocally states that federal district courts may not rely on any of these statutes to exercise jurisdiction over challenges to a noncitizen’s removal. *See* 8 U.S.C. § 1252(g).

Given this clear statutory language, it is well-settled in the Sixth Circuit that federal district courts do not have jurisdiction to hear challenges to removal or enjoin ICE from executing an order of removal. *See Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018) (“The district court did not have jurisdiction over Petitioners’ removal-based claims”); *Muka v. Baker*, 559 F.3d 480, 483 (6th Cir. 2009) (holding that district courts do not have jurisdiction to hear direct or indirect challenges to removal) (citations omitted).

Here, the Court should vacate its stay of removal. The proper venue for petitioner’s motion to stay his removal is the Board of Immigration Appeals and then a U.S. Court of Appeals. (*See* BIA Mot. to Stay, ECF No. 7-5, PageID.87); 8 U.S.C. § 1252(a)(5). And petitioner has recently pursued that avenue for relief. (*See id.*). Meanwhile, Congress specifically stripped this Court of jurisdiction to stay his

removal. *See* 8 U.S.C. § 1252(g). Therefore, the Court should vacate its order staying petitioner's removal to allow the Board of Immigration Appeals to determine whether the merits of his motion to re-open his administrative immigration proceedings warrant a stay of removal in this case.

The Court should reject petitioner's argument that it has jurisdiction to stay removal in this case. "Jurisdiction of the lower federal courts is . . . limited to those subjects encompassed within a statutory grant of jurisdiction." *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). In petitioner's motion, the only statute he cites in support of this Court's jurisdiction to issue a stay of removal is the All Writs Act, 28 U.S.C. § 1651. (Mot. for TRO, ECF No. 4, PageID.29). However, Congress specifically prohibited federal district courts from relying on the All Writs Act to stay removal. *See* 8 U.S.C. § 1252(g). Accordingly, the Court should vacate its stay of removal for lack of subject matter jurisdiction.

II. The Court Should Vacate its Order Enjoining Transfer

ICE has discretion to determine where noncitizens are detained during their administrative immigration proceedings. *See* 8 U.S.C. § 1231(g)(1). And it is well accepted that noncitizens "remaining in detention for extended periods are often transferred several times during their detention" for uncontroversial logistical reasons. *Roman v. Ashcroft*, 340 F.3d 314, 326 (6th Cir. 2003).

Further, the available authority indicates that jurisdiction over a habeas

petition filed under § 2241 attaches at the time of filing. *See Ex Parte Endo*, 323 U.S. 283, 285 (1944); *White v. Lamanna*, 42 F. App'x 670, 671 (6th Cir. 2002). Therefore, transfers after suit is filed do not deprive a district court of jurisdiction if the petitioner was detained within the court's territorial jurisdiction when the habeas suit was filed. *See White*, 42 F. App'x at 671 ("Because White filed his petition while he was incarcerated in the Northern District of Ohio, the district court retained jurisdiction over his petition following his transfer.").

Here, there is good cause to vacate the Court's order prohibiting petitioner's transfer. To the extent that the Court's order enjoining petitioner's transfer is intended to prevent his removal from the United States, it lacks jurisdiction. *See* 8 U.S.C. § 1252(g). And any transfer of the petitioner outside of the district at this time would not affect the Court's jurisdiction. *See White*, 42 F. App'x at 671. Accordingly, the Court's order enjoining petitioner's transfer is unwarranted.

Conclusion

Respondents respectfully request that the Court vacate its order enjoining petitioner's removal and petitioner's transfer from his current detention facility.

Respectfully submitted,

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Date: March 23, 2026

Certificate of Service

I hereby certify that on March 23, 2026, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey

Zak Toomey

Assistant U.S. Attorney