IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ANTONIO BARRENO CUX,

Petitioner,

v. **No. 2:26-cv-02671-SHL-cgc**

CHRISTOPHER BULLOCK,
Field Office Director of U.S.
Immigration and Customs
Enforcement, New Orlean Field Office,

Respondent.

RESPONSE TO EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, STAY OF REMOVAL, AND REQUEST FOR RELEASE

On June 11, 2026, Petitioner filed an emergency motion for temporary restraining order ("TRO") and stay of removal, seeking habeas corpus relief under 28 U.S.C. § 2241. ECF No. 2. Petitioner simultaneously conceded proper detention under 8 U.S.C. § 1231. ECF No. 1 at PageID 2 ¶6. In his motion, Petitioner argues that the Court should stay his removal to allow him time to rescind his final order of removal in immigration court based on lack of notice and to pursue immigration benefits based on his Special Immigrant Juvenile Visa status. *Id.* at PageID 3, 6.

The Court should deny the motion because Petitioner is subject to a final order of removal, and his detention is governed by 8 U.S.C. § 1231. The Court should also deny the motion for TRO and to stay removal because (1) the Court lacks jurisdiction to enjoin the Government from executing an order of removal; (2) Petitioner has not shown a substantial likelihood of success on the merits and relief in the form of a stay of removal is not available in habeas; (3) and the equities

weigh in the Government's favor. Accordingly, Petitioner is not entitled to any relief from this Court.

I. BACKGROUND

Petitioner is a native and citizen of Guatemala. Ex. 1, Notice to Appear at 1. He is not a citizen of the United States. *Id.* Petitioner illegally entered the United States on or about June 15, 2016. *Id*; Ex. 2, I-213(2024) at p.2. Petitioner was served with a Notice to Appear ("Notice to Appear") and placed in removal proceedings. Ex. 2, I-213(2024) at p.2. Thereafter, Petitioner filed with United States Citizenship and Immigration Service ("USCIS") an I-360 Petition for Amerasian, Widower, or Special Immigrant, which was approved on November 15, 2019. Ex. 3, I-213(2026) at p.3. The Department of Homeland Security and Petitioner jointly moved to dismiss Petitioner's pending immigration removal proceedings on October 21, 2021. Ex. 2, I-213(2024) at p.3.

On December 21, 2021, Petitioner filed an I-485 Application to Register for Permanent Residence or Adjust Status. Ex. 3, I-213(2026) at p.3. However, the application was rejected on January 25, 2022. *Id.* Petitioner filed the same application again, which remains pending. *Id.*

On February 20, 2024, following an arrest in Lee County, Mississippi for driving under the influence, domestic violence, and burglary, Petitioner – who was 23 years old at the time – was personally served with a new NTA, placed back in immigration removal proceedings, and released on his recognizance. *Id.*; Ex. 1, Notice to Appear at p.2. To be sure, the NTA advised of and gave notice of the exact time, date, and place of Petitioner's immigration proceedings. Ex. 1, Notice to Appear at p.1. Nonetheless, Petitioner failed to appear at his initial hearing on June 30, 2025 and therefore received a final order of removal at that time. Ex. 3, I-213(2026) at p.3.

However, on June 5, 2026, Petitioner was arrested again in Pontotoc County, Mississippi for the offense of domestic violence. *Id.* On June 8, 2026, following his release from the Pontotoc jail, Petitioner was detained by ICE and served with an Form I-200, Warrant of Arrest. *Id.*

II. ARGUMENT

A. The Court should deny the habeas petition because Petitioner is lawfully detained under 8 U.S.C. § 1231.

Petitioner apparently concedes proper detention under 8 U.S.C. § 1231. ECF No. 1, PageID 2. Petitioner is thus lawfully detained under 8 U.S.C. § 1231 because he is subject to a final order of removal. Section 1231 directs the Attorney General to detain and remove an alien from the United States within 90 days of an order of removal. See 8 U.S.C. § 1231(a). Section 1231 further authorizes detention beyond the initial 90-day removal period. 8 U.S.C. § 1231(a) (6). In Zadvydas v. Davis, 533 U.S. 678, 689 (2001), the U.S. Supreme Court held that 8 U.S.C. § 1231(a) (6) limits an alien's post-order custody to a period reasonably necessary to bring about that alien's removal from the United States. However, the Court further determined that six months was a presumptively reasonable period of post-order detention under 8 U.S.C. § 1231(a) (6) – a determination that avoided any "serious constitutional concerns." Zadvydas, 533 U.S. at 682, 701. That is the case here. Because the Petitioner's detention is presumptively reasonable – less than thirty days at this point – the Court should deny the petition.

B. The Court should deny the motion for TRO to stay removal.

The Court should deny the motion for TRO and to stay removal for at least two reasons: (1) the Court lacks subject matter jurisdiction to stay Petitioner's removal and (2) the factors courts consider when deciding whether to enter a TRO or preliminary injunction weigh in the Government's favor. Specifically, Petitioner has not shown a strong likelihood of success on the merits and a consideration of the equities weighs in the Government's favor.

1. The Court lacks subject matter jurisdiction to issue the requested relief.

The Court lacks jurisdiction to stay an order of removal. "As 'courts of limited jurisdiction,' federal courts 'possess only that power authorized by Constitution and statute' and may not expand that power 'by judicial decree.'" *United States v. Lucido*, 612 F.3d 871, 873 (6th Cir. 2010) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). "Congress enacted 8 U.S.C. § 1252(g) to limit the jurisdiction of federal courts." *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018). The statute provides as follows:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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 commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). "This provision applies to three discrete actions that the Attorney General may take: the decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Hamama*, 912 F.3d at 874 (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)) (cleaned up) (vacating preliminary injunctions issued to stay the execution of long-standing final removal orders of Iraqi nationals that were sought to allow petitioners time to "file a motion to reopen in the appropriate administrative immigration forum").

Here, Petitioner asks the Court to stay enforcement of his long-standing final order of removal to give his an opportunity to seek immigration relief. ECF No. 1 at PageID 1,3 and 6. Under § 1252(g), the Court lacks jurisdiction to do so. Therefore, the Court should deny the motion for TRO and stay of removal.

2. The TRO factors weigh in the Government's favor.

The decision to grant or deny a TRO falls within the district court's discretion. *Ne. Ohio Coal.*, 467 F.3d at 1009. A court considers four factors when deciding whether to grant a TRO:

(1) whether the moving party has a strong likelihood of success on the merits; (2) whether the moving party would suffer irreparable harm without a TRO; (3) whether others would suffer substantial harm if a TRO were granted; and (4) whether a TRO would serve the public's interest. *Id.* (citing *Summit Cnty. Democratic Cent. and Executive Comm. v. Blackwell*, 388 F.3d 547, 550 (6th Cir. 2004); *Nader v. Blackwell*, 230 F.3d 833, 834 (6th Cir. 2000)). When the government is a party, as here, the final two factors for a preliminary injunction (harm to the opposing party and the public interest) merge. *Wilson v. Williams*, 961 F.3d 829, 844 (6th Cir. 2020) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

"Temporary restraining orders ... are extraordinary remedies which should be granted only if the movant carries his burden of proving that the circumstances clearly demand it." *Barron v. PGA Tour, Inc.*, 670 F. Supp.2d 674, 682 (W.D. Tenn. 2009) (citations omitted). "No single factor is determinative except that 'a finding that there is simply no likelihood of success on the merits is usually fatal.'" *Hancox v. Citimortgage, Citifinancial, Cmty. Mortg.*, No. 13-2629-STA-dkv, 2013 WL 12049113, at *2 (W.D. Tenn. Aug. 15, 2013) (quoting *Gonzales v. Nat'l Bd. of Med. Exam'rs*, 225 F.3d 620, 625 (6th Cir. 2000)).

a. Petitioner has not shown a strong likelihood of success on the merits.

Petitioner has not shown a strong likelihood of success on the merits that he is entitled to a stay of removal. First, as discussed above, the Court lacks jurisdiction to stay removal, which should end the inquiry.

Second, the gravamen of the motion concerns his lack of notice of immigration proceedings while he was a minor. ECF No. 1, PageID 1, 2, and 3. Although Petitioner was a minor when he received his first NTA in the year 2016, the immigration removal proceedings thereunder were jointly dismissed by both parties. Ex. 2, I-213(2024) at pp. 2 and 3. When

Petitioner was *personally* served with his *second* NTA on February 20, 2024, he was 23 years old. Ex. 1, Notice to Appear at pp. 1 and 2. In addition, that NTA explicitly lists the date, time, and place of his removal proceedings. *Id.* at p.1. The NTA ordered Petitioner to appear at 80 Monroe Avenue, Memphis, TN 38103 on June 30, 2025 at 8:30 am. *Id.* Any argument that Petitioner's notice to went to the wrong address or that he did not get notice because he switched residences is inaccurate, as Petitioner was personally service with notice of the time, date, and place of his immigration proceedings. Thus, any motion to reopen in immigration court based on these allegations will certainly be denied. As a result, Petitioner's motion in this Court should be denied as well.

Moreover, relief in the form of stay of removal is not available in habeas. "The traditional remedy provided by habeas is 'removing the injury of unjust and illegal confinement.'" *Hamama*, 912 F.3d at 875 (citing 3 William Blackstone, Commentaries on the Laws of England 137 (1768); *Munaf v. Geren*, 553 U.S. 674, 693 (2008)); *see Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("[T]he traditional function of the writ is to secure release from illegal custody."). Rather than release, Petitioner seeks a "court order requiring the United States to shelter [him]." *Hamama*, 912 F.3d at 875 (quoting *Munaf*, 553 U.S. at 693–94). "[T]he common-law writ could not have granted Petitioner['s] requested relief." *Id.* Therefore, Petitioner has not shown a substantial likelihood of success on the merits, and the Court should deny the motion for TRO and to stay removal.

b. Petitioner's risk of irreparable harm is low.

Petitioner's removal would not constitute irreparable harm. As the Supreme Court has noted, "[a]lthough removal is a serious burden for many aliens, it is not categorically irreparable." *Nken*, 556 U.S. at 435 (holding that the traditional stay factors govern a court of appeals' authority

to stay removal pending judicial review of the Board of Immigration Appeals' denial of a petition to reopen removal proceedings). And "the burden of removal alone cannot constitute the requisite irreparable injury." *Id.*

c. The interests of the public outweigh Petitioner's risk of irreparable harm.

The interests of the public outweigh Petitioner's risk of irreparable harm in this case. The government has an inherent and compelling interest in enforcing its immigration laws. The balancing of equities weighs in favor of allowing the government to enforce its immigration laws as written and codified by Congress.

III. CONCLUSION

For the foregoing reasons, the Court should deny the motion for temporary restraining order and to stay removal and deny any requested habeas corpus relief.

Date: June 22, 2026

Respectfully submitted,

D. Michael Dunavant
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CERTIFICATE OF SERVICE

I, Samuel Christian, Jr., Special Assistant United States Attorney for the Western District of Tennessee, certify that I filed the foregoing via the Court's CM/ECF system and thereby served all counsel of record.

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