UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ALFREDO BARAJAS ZARAGOZA,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security;

TODD BLANCHE, United States Attorney General;

DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement;

MARY DE ANDA-YBARRA, El Paso Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, or her successor or acting counterpart;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

Respondents.

§
§ Civil Action No. _____
§
§
§ ***** EMERGENCY *****
§
§ **REMOVAL THREATENED**
§ **AUGUST 24-25, 2026**
§
§ **PETITIONER IS DETAINED**

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND STAY OF REMOVAL

EMERGENCY RELIEF IS REQUESTED. Petitioner is detained in El Paso, Texas and has been told by ICE officers that he will be physically removed to Mexico on August 24 or August 25, 2026. Petitioner's removal is stayed by operation of federal statute. INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii). Petitioner respectfully requests that this Court rule on the request for a temporary restraining order before the close of business on August 24, 2026.

I. NATURE OF THE ACTION AND EMERGENCY

1. This is an emergency habeas corpus action brought under 28 U.S.C. § 2241 by a man whom the federal government intends to deport within the next twenty-four to forty-eight hours notwithstanding that Congress has expressly forbidden his removal at this moment.

2. Petitioner Alfredo Barajas Zaragoza was ordered removed *in absentia* by the Las Vegas Immigration Court on July 23, 2026, at a hearing he did not know existed. The Notice to Appear was mailed to a house in Las Vegas, Nevada that Petitioner had permanently vacated two months earlier; it went to the home of his estranged ex-wife, who never told him about it. Petitioner learned of the removal order for the first time on August 17, 2026, when ICE arrested him at his home in Kerrville, Texas.

3. On August 21, 2026, through undersigned counsel, Petitioner filed a Motion to Reopen and Rescind the *In Absentia* Order of Removal with the Las Vegas Immigration Court under INA § 240(b)(5)(C)(i) and (ii). The motion was accepted for filing through EOIR's electronic filing system on August 21, 2026 at 2:52 p.m. Eastern Daylight Time. It remains pending and undecided.

4. The filing of that motion stayed Petitioner's removal automatically, by force of statute. Congress could not have been plainer: "The filing of the motion to reopen described in clause (i) or (ii) shall stay the removal of the alien pending disposition of the motion by the immigration judge." 8 U.S.C. § 1229a(b)(5)(C). The implementing regulation repeats the command. 8 C.F.R. § 1003.23(b)(4)(ii). No motion, no bond, no exercise of agency

discretion, and no order of any court is required. The stay attached the instant the motion was filed and it will remain in force until the Immigration Judge rules.

5. Respondents are nevertheless proceeding to remove him. On or about August 19, 2026, Respondents transferred Petitioner from the South Texas ICE Processing Center in Pearsall, Texas to El Paso, Texas, a facility from which ICE conducts removals to Mexico. Over the weekend of August 22-23, 2026, ICE officers told Petitioner that he would be deported "tomorrow or Tuesday at the latest."

6. There is therefore no lawful removal order for Respondents to execute right now. Whatever authority Respondents ordinarily possess to carry out a final order under 8 U.S.C. § 1231(a) has been suspended by Congress for as long as the motion to reopen is pending. An officer who deports Petitioner tomorrow will not be exercising enforcement discretion; he will be acting without any statutory authority at all.

7. If Petitioner is removed to Mexico before the Immigration Judge rules, the statutory right Congress gave him will be extinguished as a practical matter. He will be separated from his United States citizen children and from his wife, who buried their stillborn child on or about July 29, 2026. He will be unable to participate meaningfully in the reopened proceedings he is fighting to obtain, and the reopening remedy will be rendered a nullity. That harm cannot be undone by any later judgment.

8. Petitioner asks this Court to do one narrow thing: hold Respondents to the stay that Congress already enacted. He asks for a temporary restraining order barring his removal from the United States, and barring his transfer outside this District, until the Las Vegas Immigration Court disposes of his pending motion to reopen; for an order to show cause under 28 U.S.C. § 2243; and, ultimately, for a writ of habeas corpus.

II. JURISDICTION

9. This action arises under the Constitution of the United States, the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1537, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

10. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1651 (All Writs Act).

11. Petitioner is "in custody under or by color of the authority of the United States" within the meaning of 28 U.S.C. § 2241(c)(1) and is "in custody in violation of the Constitution or laws . . . of the United States" within the meaning of § 2241(c)(3). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

A. 8 U.S.C. § 1252 Does Not Strip This Court of Jurisdiction.

12. Petitioner does not ask this Court to review the *in absentia* order of removal, to decide whether he is removable, or to grant him any form of discretionary relief from removal. Petitioner asks only whether Respondents presently possess statutory authority to execute a removal order that Congress has stayed. That is a pure question of law about the scope of Respondents' authority, and it is precisely the kind of question habeas exists to answer.

13. 8 U.S.C. § 1252(a)(5) and § 1252(b)(9) channel "judicial review of an order of removal" into the courts of appeals on a petition for review. Petitioner seeks no such review. He accepts, for present purposes, that the *in absentia* order exists; his claim is that the statute

forbids its execution today. A petition for review in the court of appeals could not supply that relief, because the relief he seeks does not arise from the order of removal but from a separate statutory command directed at Respondents' conduct.

14. 8 U.S.C. § 1252(g) is likewise inapplicable. That provision is not a general bar on district court jurisdiction over immigration-related claims. It reaches only "three discrete actions that the Attorney General may take: her decision or action to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) (emphasis in original). The Supreme Court expressly rejected the "zipper clause" reading under which § 1252(g) would "cover[] the universe of deportation claims," *id.*, and explained that the provision was directed at protecting the exercise of prosecutorial *discretion* from judicial interference, *id.* at 483-85.

15. There is no discretion here to protect. Congress removed the decision from Respondents' hands. When a statute says removal "shall" be stayed, an officer who removes the noncitizen anyway is not making a "decision or action to execute [a] removal order" of the kind § 1252(g) shields; he is acting *ultra vires*, outside the authority Congress conferred. A statute that insulates discretionary choices does not insulate conduct that Congress has forbidden outright. Reading § 1252(g) to bar review of an allegedly unlawful evasion of a statutory stay would leave the stay unenforceable by anyone, which cannot have been what Congress intended when it enacted it.

16. Nor does 8 U.S.C. § 1252(f)(1) bar relief. That provision restrains lower courts from enjoining "the operation of" 8 U.S.C. §§ 1221-1232 on a classwide basis, but by its own terms preserves relief "with respect to the application of such provisions to an individual

alien against whom proceedings under such part have been initiated." *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 550-51 (2022). Petitioner seeks individualized relief for himself alone. Moreover, Petitioner seeks in the first instance a stay rather than an injunction, and "[a]n injunction and a stay have typically been understood to serve different purposes." *Nken v. Holder*, 556 U.S. 418, 428 (2009).

17. Finally, to whatever extent § 1252 could be read to foreclose any judicial forum for the claim that federal officers are about to remove a man in the teeth of an express statutory prohibition, that reading would raise grave questions under the Suspension Clause and should be avoided. *See INS v. St. Cyr*, 533 U.S. 289, 299-305 (2001); *Boumediene v. Bush*, 553 U.S. 723, 771 (2008).

B. Authority to Grant Interim Relief.

18. This Court has authority to grant a temporary restraining order and preliminary injunctive relief under Federal Rule of Civil Procedure 65 and under the All Writs Act, 28 U.S.C. § 1651, to preserve its jurisdiction and to prevent the habeas petition from being rendered moot by Petitioner's removal from the country.

19. 28 U.S.C. § 2243 requires this Court to award the writ or issue an order to show cause "forthwith" unless it appears from the application that the applicant is not entitled to relief, and provides that the return day shall be within three days unless additional time is needed. Petitioner requests an order to show cause on that schedule.

III. VENUE

20. Venue is proper in the Western District of Texas, El Paso Division. Petitioner is presently confined at the El Paso Service Processing Center, 8915 Montana Avenue, El Paso,

Texas 79925 [or such other ICE facility in El Paso County at which Respondents are holding him], which lies within this District and Division. 28 U.S.C. § 124(d)(3).

21. The proper respondent in a habeas action challenging present physical confinement is the immediate custodian, and the proper forum is the district of confinement. *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35, 442-47 (2004). Petitioner names the warden or officer in charge of the facility where he is held, together with the ICE El Paso Field Office Director who directs his detention and his imminent removal.

22. Petitioner notes that Respondents moved him from Pearsall, Texas (San Antonio Division of this District) to El Paso only after undersigned counsel entered an appearance and filed the motion to reopen. Petitioner respectfully requests that this Court include in any order a directive that Respondents not transfer him outside this District while this Petition is pending, so that the Court's jurisdiction is preserved.

IV. PARTIES

23. Petitioner ALFREDO BARAJAS ZARAGOZA is a native and citizen of Mexico, born [redacted] 1989, assigned File No. [redacted]. Before his arrest he resided at [redacted] Kerrville, Texas [redacted] with his wife and children. He is presently detained by ICE in El Paso, Texas.

24. Respondent KRISTI NOEM is the Secretary of the United States Department of Homeland Security. She is responsible for the administration and enforcement of the immigration laws and has ultimate custodial authority over Petitioner. She is sued in her official capacity.

25. Respondent PAMELA BONDI is the Attorney General of the United States. She heads the Department of Justice, of which the Executive Office for Immigration Review is a component. She is sued in her official capacity.

26. Respondent TODD LYONS is the Acting Director of U.S. Immigration and Customs Enforcement, or is succeeded by the current officeholder. He is responsible for ICE's detention and removal operations nationwide and is sued in his official capacity.

27. Respondent JOEL GARCIA is, on information and belief, the Field Office Director (or Acting Field Office Director) for ICE Enforcement and Removal Operations, El Paso Field Office, 11541 Montana Avenue, Suite E, El Paso, Texas 79936. On information and belief, DHS rotates its Field Office Directors without publishing a schedule; accordingly, Joel Garcia or his unannounced provisional replacement directs Petitioner's detention and the removal that is presently scheduled. He is sued in his official capacity.

28. Respondent [WARDEN / OFFICER IN CHARGE] is the warden or officer in charge of the El Paso Service Processing Center, where Petitioner is confined. He or she has immediate physical custody of Petitioner and is sued in his or her official capacity.

29. Respondent UNITED STATES DEPARTMENT OF HOMELAND SECURITY is the federal agency responsible for the enforcement of the immigration laws, including the detention and removal of noncitizens.

30. Respondent UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT is the component of DHS that detains Petitioner and that intends to execute his removal.

31. Respondent EXECUTIVE OFFICE FOR IMMIGRATION REVIEW is the component of the Department of Justice that operates the immigration courts, including the Las Vegas Immigration Court in which Petitioner's motion to reopen is pending.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. There is no statutory exhaustion requirement for a petition for writ of habeas corpus under 28 U.S.C. § 2241.

33. In any event, Petitioner has invoked the only administrative remedy that exists. He filed the motion to reopen. That filing is what triggered the statutory stay. There is no further administrative step by which a noncitizen "perfects" or "requests" a stay that Congress made automatic, and Respondents have identified none.

34. Undersigned counsel has notified Respondents in writing, by service of the file-stamped motion to reopen and by direct communication with ICE Enforcement and Removal Operations and Petitioner's assigned deportation officer, that Petitioner's removal is stayed by operation of statute. Respondents have nonetheless advised Petitioner that his removal will proceed. Any further administrative request would be futile and, given a removal date of August 24 or 25, 2026, there is no time in which to make one.

VI. STATEMENT OF FACTS

A. Petitioner and His Family.

35. Petitioner is thirty-seven years old. He has lived in the United States for years and has been a working member of his community. He has custody of two children from his prior marriage and has a child with his current wife, Rubi Sanchez. His family lives in Kerrville, Texas, in the San Antonio Division of this District.

36. In late July 2026, Ms. Sanchez was pregnant and near full term. An ultrasound performed in the days before the delivery revealed that the child had no heartbeat. On July 29, 2026, Ms. Sanchez delivered the child, stillborn, at Peterson Hospital in Kerrville, Texas.

B. The Notice to Appear Went to an Address Petitioner Had Vacated.

37. Petitioner formerly resided at [redacted] Las Vegas, Nevada 89115, with his then-spouse, Yesenia Jasmine Soto. They are divorced and wholly estranged; their relationship is hostile.

38. In May 2026, Petitioner relocated permanently to [redacted] Kerrville, Texas [redacted], where he resided continuously until his arrest. He has not lived at [redacted] at any time since.

39. On June 23, 2026, DHS issued a Notice to Appear (Form I-862) from Lincoln, Nebraska charging Petitioner under INA § 212(a)(6)(A)(i). The Notice listed his address as [redacted] Las Vegas, Nevada [redacted], and set a hearing for July 23, 2026 at 8:30 a.m. before the Las Vegas Immigration Court. The Certificate of Service reflects service by regular mail. The Notice was not personally served, and the field identifying the language in which oral notice of the hearing and of the consequences of failing to appear was given is blank.

40. Petitioner never received the Notice to Appear. Ms. Soto did not tell him about it. On June 30, 2026, Petitioner's then-counsel before USCIS, American Liberty Law Group Ltd., emailed Ms. Soto and asked her to have Petitioner contact the firm; on Petitioner's knowledge, the firm did not contact him directly, and it never filed a Form EOIR-28 in the removal proceedings.

41. Petitioner did not appear on July 23, 2026 because he did not know the hearing existed. He was in Texas with his wife in the final days of her pregnancy. The Immigration Judge ordered him removed *in absentia* that day.

C. Petitioner's Arrest, the Motion to Reopen, and the Automatic Stay.

42. On August 17, 2026, ICE arrested Petitioner in Texas. That was the first he learned of the removal proceedings or of the *in absentia* order. He was detained at the South Texas ICE Processing Center, 566 Veterans Drive, Pearsall, Texas 78061.

43. Petitioner retained undersigned counsel on August 20, 2026. Counsel filed a Form EOIR-28 with the Las Vegas Immigration Court on August 21, 2026, and on the same day filed Respondent's Motion to Reopen and Rescind *In Absentia* Order of Removal. The motion was accepted through EOIR's electronic filing system on August 21, 2026 at 2:52:22 p.m. Eastern Daylight Time. A file-stamped copy is attached as Exhibit A.

44. The motion is brought under both clauses of INA § 240(b)(5)(C). It argues principally that under *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001) (en banc), the Las Vegas address never became an address "provided under section 239(a)(1)(F)" because Petitioner never received the Notice to Appear and was never advised of the address obligations it imposes, so that an *in absentia* order could not lawfully be entered; and, in the alternative, that exceptional circumstances under INA § 240(e)(1) excused his failure to appear. The motion is timely on both grounds: a non-receipt motion may be filed at any time, and the 180-day period for an exceptional-circumstances motion does not expire until on or about January 19, 2027.

45. The motion remains pending. The Las Vegas Immigration Court has not ruled on it, has not denied it, and has entered no order disposing of it. A true and correct copy of the docket or filing confirmation available to counsel is attached as Exhibit B.

46. By its own terms, the first page of the motion gave notice of the statutory stay, and counsel served a file-stamped copy on the Department of Homeland Security through ECAS and on ICE Enforcement and Removal Operations.

D. Respondents' Threatened Removal.

47. On or about August 19, 2026, Respondents transferred Petitioner from Pearsall, Texas to El Paso, Texas, several hundred miles from his family, his counsel, and the division in which he was first confined.

48. On or about August 22-23, 2026, ICE officers at the El Paso facility told Petitioner that he would be removed to Mexico "tomorrow or Tuesday at the latest"—that is, on August 24 or August 25, 2026. Petitioner communicated this to undersigned counsel.

49. Undersigned counsel promptly advised Respondents that Petitioner's removal is stayed by operation of INA § 240(b)(5)(C) and 8 C.F.R. § 1003.23(b)(4)(ii) and provided the file-stamped motion to reopen. On information and belief, Respondents have not rescinded the scheduled removal.

50. Petitioner has never previously filed a motion to reopen or a motion to reconsider. He has never previously been ordered removed. He has never failed to appear at any other immigration proceeding. He has no removal-related history that would place him outside the automatic stay provision.

VII. LEGAL FRAMEWORK

A. Congress Made the Stay Automatic and Mandatory.

51. An *in absentia* order of removal "may be rescinded only—(i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances . . . or (ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in

accordance with paragraph (1) or (2) of section 239(a) . . . ." INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C).

52. The same subparagraph continues: "The filing of the motion to reopen described in clause (i) or (ii) shall stay the removal of the alien pending disposition of the motion by the immigration judge." *Id.*

53. The implementing regulation is to the same effect: "The filing of a motion to reopen under this paragraph shall stay the removal of the alien pending decision on the motion . . . ." 8 C.F.R. § 1003.23(b)(4)(ii).

54. Three features of this text control this case. First, the stay is triggered by "[t]he filing"—not by the granting of the motion, not by a prima facie showing, and not by any determination that the motion is meritorious. Second, the stay is mandatory: "shall stay." Congress used no permissive language and vested no official with discretion to withhold it. Third, the stay runs "pending disposition of the motion by the immigration judge," which fixes both its beginning and its end. It has begun. It has not ended.

55. Petitioner's motion is a "motion to reopen described in clause (i) or (ii)." It is filed under both. It was filed and accepted on August 21, 2026. The stay attached that day.

B. Removal in Violation of the Stay Is Action Without Statutory Authority.

56. Respondents' authority to remove a noncitizen derives from 8 U.S.C. § 1231(a), which directs the Attorney General to remove the noncitizen within ninety days of the date the order of removal becomes administratively final. That authority is not free-standing; it is subject to the rest of the statutory scheme, including the stay Congress enacted at § 1229a(b)(5)(C).

57. Where Congress has stayed removal, there is no removal authority to exercise. Federal officers possess only the powers Congress gives them. Conduct that exceeds those powers is subject to judicial correction, and habeas corpus is the historic vehicle for correcting it when the consequence is the loss of physical liberty.

58. This is not a case in which Petitioner asks the Court to second-guess an enforcement priority, a detention decision, or a discretionary judgment about whom to deport and when. Respondents may hold whatever enforcement views they wish. What they may not do is remove a man whose removal Congress has stayed.

C. Removal Would Also Defeat the Statutory Right the Stay Protects.

59. The stay exists for a reason. A noncitizen who is removed while his motion to reopen is pending loses, in practical terms, the benefit of any order granting it. He cannot appear at the reopened hearing. He cannot testify. He cannot present the declarations and medical records that counsel is presently assembling. The relief Congress provided—rescission of an order entered without notice—becomes theoretical.

60. Congress's decision to make the stay automatic reflects a judgment that the risk of erroneously deporting someone who was never told about his hearing is unacceptable, and that the modest cost of pausing removal while an Immigration Judge rules is worth bearing. Respondents are not entitled to substitute a different judgment.

VIII. CLAIMS FOR RELIEF

COUNT ONE: Violation of INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C)

61. Petitioner incorporates by reference each preceding paragraph.

62. Petitioner filed a motion to reopen described in clauses (i) and (ii) of INA § 240(b)(5)(C) on August 21, 2026. That motion is pending before the Las Vegas Immigration Court.

63. By operation of 8 U.S.C. § 1229a(b)(5)(C), Petitioner's removal is stayed pending the Immigration Judge's disposition of that motion.

64. Respondents' threatened execution of the removal order during the pendency of the stay is contrary to law and in excess of Respondents' statutory authority. Petitioner's continued detention for the purpose of effecting an unlawful removal is likewise unlawful.

COUNT TWO: Violation of 8 C.F.R. § 1003.23(b)(4)(ii)

65. Petitioner incorporates by reference each preceding paragraph.

66. 8 C.F.R. § 1003.23(b)(4)(ii) independently stays Petitioner's removal pending decision on his motion to reopen. Respondents are bound by their own regulations.

67. Respondents' threatened removal of Petitioner violates that regulation.

COUNT THREE: Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)

68. Petitioner incorporates by reference each preceding paragraph.

69. Respondents' decision to execute Petitioner's removal notwithstanding the statutory stay is final agency action that is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and in excess of statutory jurisdiction, authority, or limitations. 5 U.S.C. § 706(2)(A), (C). Petitioner pleads this count in the alternative to the extent the Court concludes that relief is available under the APA rather than, or in addition to, § 2241.

COUNT FOUR: Violation of the Due Process Clause of the Fifth Amendment

70. Petitioner incorporates by reference each preceding paragraph.

71. The Fifth Amendment forbids the deprivation of liberty without due process of law. Noncitizens present in the United States are persons within its protection.

72. Petitioner was ordered removed at a hearing of which he received no notice, on the basis of a Notice to Appear mailed to a residence he had vacated and intercepted by a hostile former spouse. Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

73. To remove Petitioner now—before any adjudicator has ever considered whether he received notice, and while the statutory mechanism for correcting that error is pending—would compound the original deprivation and foreclose any meaningful opportunity to be heard.

IX. GROUNDS FOR A TEMPORARY RESTRAINING ORDER AND STAY OF REMOVAL

74. Petitioner moves under Federal Rule of Civil Procedure 65(b) and 28 U.S.C. § 1651 for a temporary restraining order barring Respondents from removing him from the United States, and from transferring him outside the Western District of Texas, until the Las Vegas Immigration Court disposes of his pending motion to reopen or until further order of this Court.

75. A party seeking preliminary relief must show a likelihood of success on the merits, that irreparable harm is likely absent relief, that the balance of equities tips in his favor, and that relief is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). Each factor favors Petitioner, and the first factor is not close.

A. Likelihood of Success.

76. Petitioner's claim turns on a single, verifiable fact and a single sentence of statutory text. The fact: a motion to reopen under INA § 240(b)(5)(C) was filed and accepted on August 21, 2026 and remains undecided. The text: "The filing of the motion to reopen described in clause (i) or (ii) shall stay the removal of the alien pending disposition of the motion by the immigration judge."

77. Respondents cannot dispute that the motion was filed; the file-stamped copy is Exhibit A. They cannot dispute that it is pending. And they cannot point to any provision permitting them to remove a noncitizen during the pendency of the statutory stay. Petitioner's likelihood of success is therefore extremely high.

78. Petitioner is also likely to succeed on the merits of the underlying motion to reopen, which strengthens rather than substitutes for the foregoing. Under *Matter of G-Y-R-*, an *in absentia* order may be entered on mailed notice only where the noncitizen received, or can be charged with receiving, the Notice to Appear advising him of his address obligations. 23 I&N Dec. at 181, 187, 189. Petitioner received nothing. The Court need not resolve that question, however, because the stay does not depend on it.

B. Irreparable Harm.

79. If Petitioner is placed on a bus or plane to Mexico this week, no subsequent order of this Court can restore what he loses. He will be separated from his wife, who suffered a stillbirth less than four weeks ago, and from his United States citizen children, including two in his custody.

80. He will also lose the practical benefit of the statutory right he is asserting. Even if the Immigration Judge grants the motion to reopen next week, Petitioner will be in another country, unable to appear, unable to present evidence, and unable to pursue the adjustment of status application that was pending on his behalf. A right that can be defeated by removing its holder before it is adjudicated is no right at all.

81. The harm is imminent. ICE has given Petitioner a removal date of August 24 or 25, 2026. There is no time for ordinary motion practice.

C. Balance of Equities.

82. The burden on Respondents is close to zero. Petitioner asks only that they refrain, for a limited period, from doing something Congress has already told them not to do. Petitioner remains in Respondents' custody throughout; he does not seek release in connection with this application. Respondents lose nothing but a few days of delay in a removal they may lawfully resume if and when the Immigration Judge denies the motion.

83. Petitioner, by contrast, faces permanent separation from his family and the extinction of his statutory remedy. The imbalance is stark.

D. Public Interest.

84. The public has no interest in the removal of a person whose removal Congress has stayed. It has a substantial interest in federal officers observing the limits of the authority Congress gave them, and in the immigration adjudication system functioning as Congress designed it. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) ("[T]here is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.").

E. Bond.

85. Petitioner respectfully requests that the Court waive the security requirement of Federal Rule of Civil Procedure 65(c). Petitioner is indigent and detained, the relief sought imposes no monetary cost on Respondents, and Respondents are agencies and officers of the United States.

X. CERTIFICATE UNDER FEDERAL RULE OF CIVIL PROCEDURE 65(b)

86. Undersigned counsel certifies as follows. Petitioner's removal is scheduled for August 24 or August 25, 2026. Undersigned counsel has notified, or is contemporaneously notifying, the United States Attorney's Office for the Western District of Texas, ICE Enforcement and Removal Operations El Paso, and the ICE Office of the Principal Legal Advisor of this filing and of the request for immediate relief, by electronic mail and by telephone, and will file a supplemental certificate detailing those efforts.

87. Specific facts in this verified Petition and in the attached exhibits show that immediate and irreparable injury—Petitioner's physical removal from the United States—will result before Respondents can be heard in opposition on an ordinary schedule. Fed. R. Civ. P. 65(b)(1)(A)-(B). Petitioner does not oppose an expedited hearing at the Court's earliest convenience and is prepared to appear on any notice.

XI. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this matter;

(b) IMMEDIATELY issue a temporary restraining order enjoining Respondents, their officers, agents, employees, and all persons acting in concert with them, from removing, deporting, or otherwise causing Petitioner to depart the United States pending disposition of his motion to reopen by the Las Vegas Immigration Court or further order of this Court;

(c) Order that Petitioner shall not be transferred outside the Western District of Texas, or transferred out of Respondents' custody within the United States, while this Petition is pending;

(d) Issue an Order to Show Cause directing Respondents to show cause, within three days pursuant to 28 U.S.C. § 2243, why the writ should not be granted;

(e) Set an expedited hearing on Petitioner's request for a preliminary injunction;

(f) Declare that Petitioner's removal is stayed by operation of INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C), and 8 C.F.R. § 1003.23(b)(4)(ii), and that Respondents lack authority to execute the *in absentia* order of removal entered July 23, 2026 while that stay remains in effect;

(g) Grant a writ of habeas corpus to the extent necessary to remedy Petitioner's unlawful custody, including his release under reasonable conditions of supervision should this Court determine that his continued detention is unlawful;

(h) If Petitioner has already been removed at the time this Court acts, order Respondents to return him to the United States and to restore him to the custodial status he occupied before removal;

(i) Waive the bond requirement of Federal Rule of Civil Procedure 65(c);

(j) Award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable provision; and

(k) Grant such other and further relief as this Court deems just and proper.

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that I am counsel for Petitioner; that I have read the foregoing Petition; and that the factual allegations set forth herein are true and correct to the best of my knowledge, information, and belief. Facts stated on information and belief are based on my communications with Petitioner, with his family, and with Respondents' personnel, and on the documents attached as exhibits. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury. 28 U.S.C. § 1746.

Respectfully submitted, August 24, 2026.



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INDEX OF EXHIBITS

Exhibit A File-stamped Respondent's Motion to Reopen and Rescind In Absentia Order of Removal, Las Vegas Immigration Court, filed and accepted August 21, 2026

Exhibit B File-stamped Form EOIR-28, Notice of Entry of Appearance, filed August 21, 2026

Exhibit C Order of the Immigration Judge dated July 23, 2026 (in absentia order of removal)

Exhibit D Notice to Appear (Form I-862) dated June 23, 2026, with Certificate of Service

Exhibit E Record of Deportable/Inadmissible Alien (Form I-213)

CERTIFICATE OF SERVICE

I, J. Daniel Garcia, certify that on August 24, 2026, a true and correct copy of the foregoing EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND STAY OF REMOVAL, was served by the CM/ECF system and, given the emergency nature of this filing, by electronic mail and hand or overnight delivery upon the following:

1. United States Attorney's Office
2. Attorney General of the United States
3. Office of the Principal Legal Advisor
4. Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, El Paso, Texas;
5. Warden / Officer in Charge, El Paso Service Processing Center, 8915 Montana Avenue, El Paso, Texas 79925;
6. Secretary of the Department of Homeland Security



J. DANIEL GARCIA
Counsel for Petitioner