District Judge Tiffany M. Cartwright
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOISES DAVID BONILLA MEJIA, Petitioner, v. LAURA HERMOSILLO, *et al.*, Federal Respondents.	Case No. 2:25-cv-02196-TMC-TLF FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCITON

This Court should deny Petitioner Moises David Bonilla Mejia's Emergency Motion for Temporary Restraining Order ("TRO"). Dkt. No. 2 ("Motion" or "Mot."). Petitioner is subject to an *in absentia* removal order that was issued when he failed to appear on time at his immigration hearing in June. He now seeks an order from this Court enjoining his removal from the United States or transfer from this District. Petitioner has not met his burden of making a clear showing that his removal or transfer would be unlawful and necessitate the extraordinary remedy of a TRO. In fact, he cannot demonstrate that he meets any of the requirements for preliminary injunctive relief or that this Court has jurisdiction to review his claims.

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Petitioner challenges the finality of his removal order and the government's decision to remove him. However, the appropriate forum to raise these claims is through the administrative process (which he is doing) or the Ninth Circuit – not this Court. An immigration judge denied Petitioner's motion to reopen his removal proceedings. And while he has appealed this order to the Board of Immigration Appeals ("BIA"), the BIA has denied his motion to stay his removal pending their decision on the appeal. The Immigration and Nationality Act ("INA") provides no other basis for a stay of his removal.

U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner pending his removal to Honduras pursuant to 8 U.S.C. § 1231(a). Accordingly, Federal Respondents respectfully request that the Court deny the TRO motion.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Honduras who entered the United States without inspection or parole on or about March 29, 2024. Piersoll Decl., ¶¶ 3, 4. Border Patrol Agents detained Petitioner and processed him for expedited removal. *Id.*, ¶¶ 5, 6. He was released from custody a few days later. *Id.*, ¶ 6. The Department of Homeland Security ("DHS") issued a notice to appear charging Petitioner as inadmissible pursuant to 8 U.S.C. §§ 1182(a)(7)(A)(i)(I) and 1182(a)(6)(A)(i). *Id.*, ¶ 7; Lambert Decl., Ex. A, Notice to Appear. The notice set an initial immigration court date of June 11, 2024. Piersoll Decl., ¶ 8.

On June 11, 2024, Petitioner appeared for an initial hearing and was granted a continuance. *Id.*, ¶ 9. In August 2024, Petitioner admitted to the allegations in the notice to appear and the immigration judge sustained the charges. *Id.*, ¶ 10. In October 2024, Petitioner appeared before an immigration judge where his case was set for a final hearing to be held on June 16, 2025. *Id.*, ¶ 11; Lambert Decl., Ex. B, Notice of In-Person Hearing. Although the immigration judge issued

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a pre-hearing order requiring evidence to be filed prior to the hearing, Petitioner filed no such evidence. Piersoll Decl., ¶¶ 11, 14.

Petitioner did not appear at the hearing on June 16, 2025. He asserts that he arrived 12 minutes late to the courtroom. Pet., ¶ 27. However, the immigration judge's recitation of the events does not support this assertion. Lambert Decl., Ex. D, Order, at 2. The immigration court confirmed that no party had appeared or checked in for the hearing before taking the bench at 8:46a.m. on June 16, 2025 – 16 minutes after the scheduled start of the hearing. *Id.* As a result, the immigration judge issued an *in absentia* removal order. Piersoll Decl., ¶ 15; Lambert Decl., Ex. C, Order. The immigration court sent Petitioner notice of the removal order, but it was subsequently returned to the court as undeliverable. Piersoll Decl., ¶ 16.

On July 18, 2025, Petitioner filed a motion to reopen his removal proceedings with the immigration judge. *Id.*, ¶ 17. In August, the immigration judge denied Petitioner's motion to reopen. *Id.*, ¶ 19; Lambert Decl., Ex. D, Order. Days later, Petitioner appealed the order with the BIA. Piersoll Decl., ¶ 20. Petitioner subsequently filed a motion to say his removal with the BIA, but the BIA rejected the filing. *Id.*, ¶ 21.

On November 3, 2025, ICE detained Petitioner as a result of his final order of removal. *Id.*, ¶ 22. That same day, Petitioner filed a second motion to stay his removal with the BIA. *Id.*, ¶ 23.

Petitioner filed this habeas action on November 4, 2025. Dkt. No. 1. He also filed this Motion seeking an order enjoining his removal from the United States or transfer from this District. Dkt. No. 2. This Court provisionally granted the Motion for the purpose of maintaining the status quo to allow time for the Court to review the merits of the Motion after full briefing. Dkt. No. 3.

The BIA denied Petitioner's motion to stay his removal on November 7, 2025. Lambert Decl., Ex. E, Stay Order.

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Petitioner remains detained at the Northwest ICE Processing Center.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

"A plaintiff seeking a preliminary injunction must show that: (1) [he] is likely to succeed on the merits, (2) [he] is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984) (internal quotation omitted). Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

IV. ARGUMENT

A. Petitioner is unlikely to succeed on the merits of his habeas petition.

1. This Court lacks subject-matter jurisdiction over Petitioner's claims.

The INA bars review of Petitioner's claims concerning his removal and removal order. 8 U.S.C. § 1252(g). As explained below, Petitioner incorrectly asserts that he is not subject to a final order of removal. He asks this Court to enjoin his removal from the United States while he seeks to reopen his removal proceedings. This claim directly arises from the government's decision to

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execute his removal order. Congress has spoken clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g).

In the exercise of its constitutional power to define federal court jurisdiction, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee* (*"AADC"*), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided in the newly-enacted Section 1252(g) that:

> Except as provided in this section and notwithstanding any other provision of law, 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 Act.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas and mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now provides that:

> 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) (2017) (emphasis added).

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In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three discrete actions that DHS may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (original emphasis). With a valid order of removal, any request for this Court to enjoin Petitioner's removal falls directly within one of the discrete actions precluded from judicial review.

Numerous courts of appeals, including the Ninth Circuit, have consistently held that claims seeking a stay of removal – even temporarily to assert other claims to relief – are barred by Section 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred plaintiff's claim seeking a temporary stay of removal while he pursued a motion to reopen his immigration proceedings); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's authority to execute a removal order rather than its execution of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting plaintiff's argument that jurisdiction remained because petitioner was challenging DHS's "legal authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide whether to execute a removal order includes the discretion to decide when to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that Section 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

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Even if Section 1252(g) did not bar review, Sections 1252(a)(5) and 1252(b)(9) strip this Court of jurisdiction. By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). The statute explicitly excludes review via "section 2241 of Title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) then eliminates this Court's jurisdiction over Petitioner's claims by channeling "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien" to the courts of appeals. 8 U.S.C. § 1252(b)(9). Again, the law is clear that "no court shall have jurisdiction, by habeas corpus" or other means. *Id.*

Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all" claims arising from deportation proceedings to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. Under Ninth Circuit law, "[t]aken together, §[§] 1252(a)(5) and [(b)(9)] mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and- practices challenges, through the PFR process whenever they 'arise from' removal proceedings").

Here, the gravamen of Petitioner's claims is that he challenges the finality of his removal order. The appropriate forum for Petitioner to challenge his *in absentia* removal order is through the administrative process or the Ninth Circuit. In 8 U.S.C. § 1252(b), Congress "consolidated judicial review of immigration proceedings into one action in the court of appeals." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 233 (2020) (quotation marks and citation omitted). This provision

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is known as the "zipper clause" because it "consolidates or 'zips' 'judicial review' of immigration proceedings into one action in the court of appeals." *Singh v. Gonzales*, 499 F.3d 969, 976 (9th Cir. 2007) (citation omitted); 8 U.S.C. § 1252(b)(9); *see also* 8 U.S.C. § 1252(a)(5) ("a petition for review . . . shall be the sole and exclusive means for judicial review of an order of removal"). "Taken together, § 1252(a)(5) and §1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M.*, 837 F.3d at 1031.

While claims "collateral to, or independent of" the removal process are still subject to habeas review, "[w]hen a claim by an alien, however it is framed, challenges the procedure and substance of an agency determination that is 'inextricably linked' to the order of removal, it is prohibited by section 1252(a)(5)." *Id.* It is not possible to meaningfully divorce the issues presented here, which all center on Petitioner's challenge to the removal order and the availability of any applications for relief from removal, from the removal proceeding itself. And while this leaves the Court without jurisdiction, it does not leave Petitioner without an opportunity for redress. It only means that Congress intended such concerns to flow directly to the appropriate court of appeals. Petitioner is appropriately seeking to reopen his removal proceedings through an appeal to the BIA of the immigration judge's denial of his motion to reopen. Thus, there are three other tribunals – the immigration court, the BIA, and the Court of Appeals – that have the potential to address the issues Petitioner raises here. Litigation before this Court, and before the issues have been addressed in the natural course of administrative and appellate litigation, would be precisely the sort of "piecemeal" adjudication Congress sought to avoid when it removed such issues from the district courts' jurisdiction. *Aguilar v. U.S. Immigr. & Cust. Enf.*, 510 F.3d 1, 9 (1st Cir. 2007) ("Such claim-splitting – pursuing selected arguments in the district court and leaving others for

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adjudication in the immigration court – heralds an obvious loss of efficiency and bifurcation of review mechanisms") (citing *H.R. Rep* No. 109-72, at 174, reprinted in 2005 U.S.C.C.A.N. at 299).

Petitioner's claims constitute a direct challenge to part of the process by which his removability will be determined and thus must proceed through the administrative process and, if a challenge to that process still exists, such a claim must be heard by the Ninth Circuit Court of Appeals. *Olivera-Julio v. Asher*, No. C14-1312-RSM, 2014 WL 6387351, at *3 (W.D. Wash. Nov. 14, 2014) (finding no jurisdiction to consider the petitioner's claims concerning staying his removal so that he can seek reconsideration of his *in absentia* removal order "because they directly implicate the validity and execution of his removal order").

2. Even assuming this Court has subject matter jurisdiction, Petitioner's INA and Procedural Due Process claims fail.

ICE lawfully detains Petitioner pursuant to 8 U.S.C. § 1231(a) because he is subject to a final order of removal. His detention lawfully comports with due process to execute that removal order. Petitioner does not dispute that he is subject to an *in absentia* removal order. But he incorrectly asserts that an *in absentia* removal order is not final until the 180 day window for filing a motion to reopen elapses or when the BIA decides an appeal of such a motion to reopen; thus, he claims that he is not subject to a final order of removal. Pet., ¶ 6. An *in absentia* removal order, however, becomes administratively final the date that it is entered by the immigration judge. 8 C.F.R. § 1241(e); *see also Olivera-Julio*, 2014 WL 6387351, at *2 (stating that *in absentia* order of removal became administratively final when entered). There is no right to administratively appeal an *in absentia* removal order. 8 C.F.R. § 1240.15. Therefore, Petitioner's removal order is final, and ICE may remove him from the United States.

Petitioner relies on a decision that was contrary to law for support that an *in absentia* removal order only becomes final after the 180-day period to file a motion to reopen or the BIA

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decides the appeal of the immigration judge's decision. Pet., ¶ 6 (citing *Cui v. Garland*, 13 F.4th 991, 996 (9th Cir. 2021)). First, the language of the INA provision concerning the recission of an *in absentia* removal order shows that the motion to reopen filing period does not determine the finality of such an order. 8 U.S.C. § 1229a(b)(5)(C). While the statute sets a 180-day deadline for an alien to move to reopen removal proceedings "if the alien demonstrates that the failure to appear was because of exceptional circumstances," it also explicitly provides that there is no deadline for filing motions to reopen based on failure to appear due to lack of notice or while in State or Federal custody. *See* 8 U.S.C. § 1229a(b)(5)(C)(i) & (ii). Thus, if Petitioner's logic that the motion to reopen filing deadline controls the finality of an *in absentia* removal order were correct, some orders would never become final and those aliens could never be removed – which would extinguish any meaning for those removal orders.

Second, removal is not automatically stayed while the BIA considers an appeal of the immigration judge's denial of a motion to reopen. While the regulations stay the execution of some decisions from which the alien has appealed to the BIA (8 U.S.C. § 1003.6(a)), there is no automatic stay when a BIA appeal is taken of an immigration judge's denial of a "motion to reopen or reconsider or to stay deportation." 8 U.S.C. § 1003.6(b). The BIA may in its discretion stay removal. *Id.*; *see also* BIA Practice Manual, Chapter 6 Stays and Expedite Requests, 6.2 Automatic Stays, § (d)(1) Motions to Reopen- Removal Proceedings (" An Immigration Judge's order is not automatically stayed in appeals to the Board from an Immigration Judge's denial of a motion to reopen removal proceedings conducted in absentia, and motions to reopen or reconsider a prior Board decision are not automatically stayed."), *available at* https://www.justice.gov/eoir/reference-materials/bia/chapter-6/2 (last visited Nov. 7, 2025). Here, the BIA has explicitly denied Petitioner's motion to stay removal while his appeal of the immigration judge is pending. Lambert Decl., Ex. E.

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Accordingly, Petitioner's removal order is final, and he may be lawfully removed.

B. Petitioner has not shown irreparable harm.

Petitioner has not demonstrated that he will suffer irreparable injury absent the injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc.*, 844 F.2d at 674 (citing *Los Angeles Memorial Coliseum Commission v. National Football League,* 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Petitioner asserts that his removal would effectively deny him the opportunity to apply for asylum and will separate him from his family. TRO Mot., at 7-8. Petitioner has not demonstrated that he will succeed on the appeal of the immigration judge's denial of his motion to reopen. Moreover, the BIA has explicitly denied Petitioner's motion to stay his removal. Furthermore, he provides no basis for irreparable harm for a transfer to a different facility. "Although removal is a serious burden for many aliens, it is not categorically irreparable." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

C. The balance of the equities and public interests favor the Government.

Finally, the balance of equities and the public interest weigh decisively against Petitioner's request for preliminary injunctive relief. Unlike some other requests for preliminary injunctive relief where the constitutionality of a statute or regulation may be in question, here Petitioner asks this Court to enjoin the enforcement of a final removal order. It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659

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F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders).

Accordingly, this Court should deny the Motion.

CONCLUSION

For these reasons, Petitioner has not satisfied the high burden of establishing entitlement to preliminary injunctive relief, and Federal Defendants request this Court deny his emergency motion for a temporary restraining order.

DATED this 7th day of November, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,566 words, in compliance with the Local Civil Rules