UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RAHEEM DELANO FULTON,

Plaintiff

v. 25-CV-0063

BENJAMIN HUFFMAN,
Acting Secretary for the U.S. Department of Homeland Security, et al.,

Respondents.

Respondents' Memorandum of Law in Opposition to Plaintiff's Motion for Temporary Restraining Order and in Support of Motion to Dismiss

This Court has repeatedly recognized that it lacks jurisdiction to halt a noncitizen's removal based on claims that the noncitizen might receive lesser health care in their native country than available in the United States. *Tavares-Tejada v. Mayorkas*, 2022 U.S. Dist. LEXIS 218759 (W.D.N.Y. Dec. 5, 2022); *Frederick v. Feeley*, 2019 U.S. Dist. LEXIS 74266 (W.D.N.Y. May 2, 2019). This Court similarly lacks jurisdiction here to grant Petitioner's request for declaratory and injunctive relief preventing his removal and, accordingly, should deny Petitioner's request for a temporary restraining order and dismiss this proceeding.

The petition alleges that Petitioner is a Jamaican who entered the United States on a temporary tourist visa in 2003 and never left. Complaint ¶ 14.

After serving 30 months in prison for an aggravated felony conviction, Petitioner entered the custody of the Department of Homeland Security, Immigration and Customs Enforcement ("ICE") on August 25, 2023. Complaint ¶¶ 17-19.

An immigration judge ordered Petitioner removed to his native Jamaica, and the Board of Immigration Appeals affirmed the removal order. Accordingly, Petitioner became subject to a final order of removal on May 2, 2024. Complaint ¶ 20.

Petitioner alleges that he has received dialysis treatment thrice weekly for end stage renal disease and argues that ICE should be enjoined from removing him unless it ensures that Petitioner receives continued dialysis treatment in Jamaica for at minimum 30 days. Complaint ¶¶ 21, 22, Prayer for Relief.

Initially, the government disputes Petitioner's complaints as speculative and request for relief as a contortion of the Performance-Based National Detention Standards (PBNDS).[1] As set forth in the declaration of Nathan Gray, the Jamaican Ministry of Health and Wellness and the ICE Health Service Corps have both approved Petitioner's removal and the Jamaican government has confirmed the availability of dialysis.

The PBNDS also afford Petitioner no relief. Section 4.3 of the PBNDS, on which Petitioner relies, applies to "facilities housing ICE/ERO detainees," not foreign countries to which detainees have been removed. *See* PBNDS 4.3(I). Additionally, the provision in 4.3(V)(Z) providing that "[u]pon removal or release from ICE custody, the detainee shall receive up to a 30 day supply of medication" is plainly inapplicable because Petitioner's complaint is not about getting a 30 day supply of medication; it's a claim that ICE is obligated to essentially dictate the scheduling of care provided to Petitioner by medical personnel in a foreign country.

[1] The Performance Based National Detention Standards ("PBNDS") are available at: https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf.

Regardless, the PBNDS are only internal guidelines, not regulations requiring notice and comment. "The law is well-settled that internal guidelines can not create a cause of action in federal court. To be given the force and effect of law a regulation must prescribe 'substantive' or 'legislative' rules rather than merely 'interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice." *Wright v. FBI*, 2006 U.S. Dist. LEXIS 52389, at *33 (D.D.C. July 31, 2006). In short, Petitioner fails to meet his burden to make "a strong showing that he is likely to succeed on the merits" *Nken v. Holder*, 556 U.S. 418, 426, (2009).

The public interest factor also weighs strongly against granting injunctive relief. The Supreme Court has long recognized that the enforcement of immigration laws "implicat[es] matters of broad public concern." *I.N.S. v. Miranda*, 459 U.S. 14, 19 (1982). The Government, therefore, has a "strong interest in avoiding delay of deportation proceedings." *Reno*, 525 U.S. at 495 (Ginsburg, J., concurring); *see also U.S. ex rel. Kovalev v. Ashcroft*, 223 F. Supp. 2d 688, 698 (E.D. Pa. 2002), aff'd, 71 F. App'x 919 (3d Cir. 2003) ("Issuing a stay would harm Respondents in their enforcement of the immigration laws and is not in the public interest as 'control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature' and the 'government's interest in efficient administration of immigration laws . . . is weighty.'") (quoting *Landon v. Plasencia*, 459 U.S. 21, 34 (1982)). Consequently, any interference with Petitioner's removal would undermine the "strong interest" expressed through provisions of immigration law, such as § 1231 and § 1252. *See Lopez v. I.N.S.*, 758 F.2d 1390, 1392 (10th Cir. 1985); *see also Rodriguez Vasquez v. Wolf*, No. 2:20-CV 01274, 2020 WL 1652541, at *4 (C.D. Cal. Feb. 10, 2020) ("[T]he public interest is better served by the continued enforcement United States immigration law."). As

other courts have noted, the grant of even a temporary delay of removal would harm the public interest by incentivizing other noncitizens to file frivolous claims to delay their own removal as well. *See, e.g., Almanzar v. Newland*, 2009 U.S. Dist. LEXIS 89354, at *5-*6 n. 6 (S.D.N.Y. Sept. 28, 2009).

Petitioner's request also interferes with the separation of powers between the judicial, executive, and legislative branch, by seeking to inject the judicial branch into a matter largely within the control of the executive and the legislature, as noted in *Landon* by the Supreme Court. *Landon*, 459 U.S. at 34 ("[I]t must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature."). Accordingly, the TRO should be denied on this ground as well.

The Court does not even need to address these issues, however, because this Petition should be dismissed for a straightforward reason. Simply put, this Court lacks jurisdiction to stop the Petitioner's removal. It has already recognized this in similar cases and should do the same thing here.

Like the Petitioner here, *Frederick v. Feeley* involved a noncitizen requesting that the Court stay his removal because "his serious medical issues require costly medicine that is unavailable or unaffordable in Trinidad and Tobago." 2019 U.S. Dist. LEXIS 74266, at *3 (W.D.N.Y. May 2, 2019). This Court recognized, however, that it "lacks jurisdiction to provide Petitioner with a stay of removal." *Id.* at *11.

This Court reached the result in *Frederick* based on two provisions in the Immigration and Naturalization Act: 8 U.S.C. § 1252(a)(5), and 8 U.S.C. § 1252(g). First, this Court recognized that § 1252(a)(5), "precludes a district court from entertaining either direct or indirect challenges to a removal order. By extension, district courts do not have the

jurisdiction to grant stays of removal in such cases." 2019 U.S. Dist. LEXIS 74266, at *10 (quoting *McRae v. Sessions*, 2018 U.S. Dist. LEXIS 194563 (W.D.N.Y. Nov. 14, 2018). Second, this Court recognized that § 1252(g) "prevents the Court from reviewing any decision by immigration authorities to execute a final order of removal. In effect, these provisions bar this Court from enjoining an alien's removal from the United States on the sorts of grounds Petitioner raises." *Id.* (cleaned up).

More recently, in *Tavares-Tejada*, this Court considered a petitioner with a heart condition's request for a stay of removal. There, the petitioner claimed that he should not face "deportation to a location with limited health resources" because he "should have access to appropriate and timely medical evaluation and care, and uninterrupted access to medications[,] for the duration of his life." 2022 U.S. Dist. LEXIS 218759, at *12-*13. Like here, the petition raised substantive and procedural due process claims under the Fifth Amendment, along with an "Administrative Procedure Act claim based on his removal without medical clearance and planning." *Id.* at *12.

Notwithstanding the petitioner's claim that he was not challenging the removal order, but instead only the manner of removal, this Court once again found the petition jurisdictionally barred under 8 U.S.C. § 1252(g): "Although framed as a challenge to how Respondents-Defendants execute his removal order, the motion for a temporary restraining order ultimately challenges their discretionary actions to deny him a stay of removal, and remove him to the Dominican Republic. Because both challenges arise from Defendants-Respondents' 'action … to … execute [his] removal order[],' Section 1252(g) divests the Court of jurisdiction to grant the relief sought." *Id.* at *13. The Court rejected relief for lack of jurisdiction. *Id.* at *15.

Make no mistake, *Frederick* and *Tavares-Tejada* are not aberrations. Rather, they are simply exemplars of this Court's clear and consistent rejection of jurisdiction to stay removals. *See*, *e.g*, *Diakhate v. Casey*, 2024 U.S. Dist. LEXIS 214323, at * 9 (W.D.N.Y. Nov. 25, 2024) (Wolford, D.J.) (explaining that because of 8 U.S.C. § 1252(a)(5) and § 1252(g), this Court "lacks the authority to stay [petitioner's] removal from the United States and noting that "'[N]umerous courts in this circuit and others' have concluded 'that the plain meaning of Section 1252 deprives federal district courts of jurisdiction over requests to stay orders of removal.'") (collecting cases); *Jimenez v. Searls*, 2023 U.S. Dist. LEXIS 237354, at * (W.D.N.Y. Feb. 28, 2023) (Sinatra, D.J.) ("This Court concludes, as have numerous courts in this Circuit and elsewhere, that Section 1252 deprives district courts of jurisdiction to stay orders of removal.") (collecting cases); *Borbor v. Garland*, 2021 U.S. Dist. LESSXIS 253050, at *4 (W.D.N.Y. July 19, 2021) (Gerace, D.J.) ("By virtue of § 1252(a)(5) and § 1252(g), this Court lacks jurisdiction to consider Petitioner's motion to stay removal."); *Tewodros v. Garland*, 2021 U.S. Dist. LEXIS 74512, at *7 (W.D.N.Y. Apr. 19, 2021) (Siragusa, D.J.) ("the Court … lacks jurisdiction to grant a stay of removal."); *Edison v. Barr*, 2020 U.S. Dist. LEXIS 157695, at *5 (W.D.N.Y. July 2, 2020) (Wolford, D.J.) ("to the extent Petitioner requested that this Court stay his removal, it lacked jurisdiction to consider that request."); *Hemans v. Searls*, 2019 U.S. Dist. LEXIS 31353, at *23 (W.D.N.Y. Feb. 27, 2019) (Vilardo, D.J.) ("'[B]ecause district courts have no jurisdiction to review final orders of removal, they have no jurisdiction to review requests for stays of removal."); *McKenzie v. Herron*, 2011 U.S. Dist. LEXIS 42460, at *2 (W.D.N.Y. Apr. 15, 2011) (Arcara, D.J.) ("This Court and other district courts throughout the country have routinely held that because district courts have no jurisdiction to review final orders of removal they have no jurisdiction to review requests

for stays of removal."); *Al-Garidi v. Holder*, 2009 U.S. Dist. LEXIS 42926, at *2 (W.D.N.Y. May 15, 2009) (Larimer, D.J.) ("This Court and other district courts throughout the country have routinely held that because district courts have no jurisdiction to review final orders of removal, they have no jurisdiction to review requests for stays of removal.").

This Court should similarly deny Petitioner's request for injunctive relief and dismiss the Petition for lack of jurisdiction. In accordance with this Court's precedent, 8 U.S.C. § 1252(a)(5) and § 1252(g) bar this Court from enjoining Petitioner's removal from the United States on the grounds Petitioner raises. 2019 U.S. Dist. LEXIS 74266, at *10.

Respectfully submitted,

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DATED: January 23, 2025
Buffalo, New York