W.D.N.Y.
25-cv-63
Sinatra, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of April, two thousand twenty-five.

Present:

Gerard E. Lynch,
Eunice C. Lee,
Alison J. Nathan,
Circuit Judges.

Raheem Delano Fulton,

Petitioner-Appellant,

v. 25-194

Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security, Thomas Brophy, in his Official capacity as Acting Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, Michael Ball, Patrick J. Lechleitner, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement,

Respondents-Appellees.

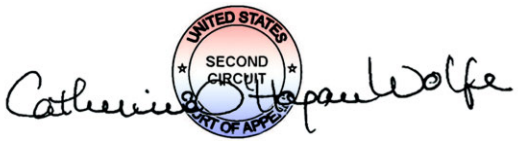
Appellant moves for a stay of removal in connection with his appeal of a district court's judgment dismissing for lack of jurisdiction his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and complaint for injunctive relief. Appellees oppose that motion. Upon due consideration, it is hereby ORDERED that Petitioner's motion for a stay of removal is GRANTED.

The Immigration and Nationality Act does not deprive us of jurisdiction to issue a stay of removal pending appeal. *See Nken v. Holder*, 556 U.S. 418, 425-27, 433 (2009) (recognizing courts' inherent power to issue stays of removal pending appeal). To the extent the Government argues that the *Nken* stay factors do not apply because 8 U.S.C. § 1252(a)(5) and § 1252(b)(9) barred the district court's review of the underlying habeas petition, that argument confuses our jurisdiction with the merits of the stay motion.

As to the stay factors, Fulton has "made a strong showing that he is likely to succeed on the merits" of his challenge to the district court's judgment. *Nken*, 556 U.S. at 426 (quotation marks omitted). The Supreme Court has "rejected" the notion "that [8 U.S.C.] § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'" *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). Rather, that jurisdictional bar narrowly applies to "cases 'arising from' decisions 'to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Id.* (emphases added) (quoting 8 U.S.C. § 1252(g)). Because Fulton challenges the manner of his removal, and not the discretionary decision to remove him, § 1252(g) likely does not deprive the district court of jurisdiction to hear his claims. The same is true of § 1252(a)(5) and § 1252(b)(9), since, again, Fulton does not "ask[] for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." *Regents*, 591 U.S. at 19 (quotation marks and alterations omitted).

Fulton has further established that he will be "irreparably injured" absent a stay of removal. *Nken*, 556 U.S. at 426 (quotation marks omitted). And the "balance of hardships" favors granting the stay. *Id.* at 436 (quotation marks omitted). Accordingly, a stay of removal pending appeal is warranted.[1]

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



[1] We note that, at oral argument, counsel for the Government emphasized that a declaration in the record indicates that it has confirmed with the Jamaican Embassy that "dialysis will be available" for Fulton upon removal. Although that declaration is not sufficient to establish mootness in the current posture, the parties should brief and argue the question of mootness for the merits panel.