UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CARLOS GUERRA LEON	)	**CIVIL ACTION NO. 3:25-cv-01495**
	)	
VERSUS	)	**JUDGE DOUGHTY**
	)	
KRISTI NOEM, ET AL	)	**MAGISTRATE JUDGE MCCLUSKY**
	)	
	)	

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

NOW INTO COURT come Respondents who, in accordance with the Court's Order dated October 10, 2025 (ECF No. 11), file this response to Petitioner's Motion for Temporary Restraining Order (TRO) and Preliminary Injunction (ECF No. 4). As set forth herein, the Court should deny Petitioner's requests for a TRO or preliminary injunctive relief because Petitioner cannot satisfy the requirements necessary for the extraordinary remedy of such relief.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Guatemala who applied for admission to the United States with his mother at the Paso Del Norte International Bridge in El Paso, Texas on February 12, 2018. (Gov. Ex. A, Declaration of Justin Williams, ¶ 3). On March 2, 2018, Petitioner was paroled from ICE custody. (Ex. A, ¶ 4). DHS placed Petitioner in removal proceedings, which resulted in an in-absentia (failure to appear) final order of removal on July 23, 2019. (Ex. A, ¶ 5). On April 11, 2022, USCIS received an I-360, Petition for Amerasian, Widower, or Special Immigrant on behalf of the Petitioner. (Ex. A, ¶ 6). On December 9, 2022, USCIS sent an I-797 Approval Notice to Petitioner regarding Special Immigrant Juvenile (SIJ) status, which included Deferred Action. *Id.* Thereafter, on August 9, 2025, the ERO Field Office in New York City, Newburgh Sub-office took Petitioner into ICE custody due to the final order of removal in place against him. (Ex. A, ¶ 7). On August 14, 2025, Petitioner filed a motion to reopen his removal case with the immigration court. (Ex. A, ¶ 8). His motion to reopen is still pending.

Id. As a result of the filing of the motion to reopen, Petitioner was granted an automatic stay of removal. *Id.* Petitioner remains in ICE custody and is currently detained at the Jackson Parish Detention Facility in Jonesboro, Louisiana. (Ex. A, ¶ 9).

On October 6, 2025, Petitioner filed a petition for writ of habeas corpus alleging his detention violates his substantive and procedural due process rights under the Fifth Amendment, and that his "warrantless" arrest and detention violates his Fourth Amendment rights. Petitioner seeks therein release from detention or, in the alternative, an immediate, constitutionally adequate individualized custody determination at which to justify continued detention or, in the further alternative, that bail be granted pending the conclusion of habeas review. Petitioner also filed the instant Motion for TRO and Preliminary Injunction, alleging the same Fifth and Fourth Amendment violations, seeking an order by this Court for his immediate release from detention. As set forth below, because Petitioner is a non-citizen subject to removal, Petitioner is being rightfully detained under 8 U.S.C.A. § 1231 and the Court should therefore decline to issue a TRO or injunctive relief.

LEGAL STANDARD AND REGULATORY FRAMEWORK

A. Legal Standard for Temporary Restraining Orders and Preliminary Injunctions

A TRO or preliminary injunction is an "extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A party seeking a TRO must show: (1) a "substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of the injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 Fl.3d 570, 574 (5th Cir. 2012); *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (*quoting Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)). However, in cases such as this, where the government is the nonmovant, the balance of hardships and lack of public disservice factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"The same standard applies to both temporary restraining orders and to preliminary injunctions." *Council on Am.-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 74 (D.D.C. 2009). Though Petitioner glosses over the standard, it bears emphasis that the standard is stringent and not easily met. The Fifth Circuit has "cautioned repeatedly" that a preliminary injunction is an "extraordinary remedy." *Tex. Med.*., 667 F.3d at 574. For this reason, the Fifth Circuit has made clear that relief should be treated "as the exception rather than the rule." *Miss. Power & Light v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1976). Such relief is "particularly disfavored" and should only issue when "the facts and law clearly favor the moving party." *Id.* 'The denial of a preliminary injunction will be upheld where the movant has failed sufficiently to establish *any one* of the four criteria." *Black Fire Fighters Ass'n v. City of Dallas, Tex.*, 905 F.2d 63, 65 (5th Cir.1990) (emphasis in original). Moreover, the Fifth Circuit has cautioned that a preliminary injunction "should not be granted unless the party seeking it has 'clearly carried the burden of persuasion' on all four requirements." *PCI Transportation Inc. v. Fort Worth & Western Railroad Co.,* 418 F.3d 535, 545 (5th Cir. 2005) (citations omitted). Therefore, without such a showing as to all four elements, the relief sought by Petitioner cannot issue. *See, e.g. Ponce v. Sorcorro Indep. Sch. Dist.*, 508 F.3d 765, 772 (5th Cir. 2007).

B. Legal Framework for Enforcement of Immigration Law Regarding Aliens with Final Orders of Removal

1. Special Immigrant Juvenile Status and Deferred Action

"The Immigration and Nationality Act [INA] of 1990 included a new form of immigration relief for non-citizen children." *Budhathoki v. Nielsen*, 898 F.3d 504, 508 (5th Cir. 2018). Specifically, "Congress established SIJ status in 1990 in order to protect abused, neglected or abandoned children who, with their families, illegally entered the United States, ... and it entrusted the review of SIJ petitions to USCIS, a component of DHS." *Osorio-Martinez v. Attorney General United States of America*, 893 F.3d 153, 162 (3d Cir. 2018) (quotations and citations omitted). An individual can obtain SIJ classification when the applicant (1) is declared dependent on a juvenile court, (2) has an administrative or judicial proceeding finding it would not be in the juvenile's best interest to be returned to the previous country they lived in, and (3) receives consent from the secretary of the Department of Homeland Security. *L.F.O.P. v. Mayorkas*, 656 F. Supp. 3d 274, 276 (D. Mass. 2023). An individual with SIJ status can apply for adjustment of status if they are eligible, admissible, and an immigrant visa is immediately available. 8 U.S.C. § 1255; 8 C.F.R. § 245.1(e)(3)(i). If an application for adjustment of status is granted, the individual receives Lawful Permanent Resident status, i.e. a green card. 8 U.S.C. § 1255(a).

Under the INA, to adjust status, "an immigrant visa [must be] immediately available" at the time an application is filed and adjudicated. 8 U.S.C. § 1255(a); 8 C.F.R. § 245.1(a). A limited number of immigrant visas to allow adjustment of status for SIJs are available each year. In 2022, USCIS recognized that "[d]ue to ongoing visa number unavailability, the protection that Congress intended to afford SIJs through adjustment of status is often delayed for years…". USCIS Policy Alert-2022-10.[1] As such, USCIS updated its policy guidance "to provide that USCIS will consider granting deferred action on a case-by-case basis to noncitizens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visa numbers." *Id.* USCIS made clear, however, that "[n]oncitizens without lawful status who have an approved SIJ petition remain subject to removal" because "SIJ classification does not render a noncitizen lawfully present, does not confer lawful status, and does not result in eligibility to apply for employment authorization." *Id.* Ultimately, an individual who obtains SIJ status receives several benefits, but is still subject to arrest, detention, and removal from the United States if a final order of removal is or has been entered against such individual. *See United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (Explaining that while "[t]he SIJ program offers aliens a multitude of benefits and protections, including the opportunity to seek lawful permanent resident status[,] … [i]n and of itself, though, an SIJ designation does not strip the U.S. government of all removal powers.") This is true even if the individual has been granted deferred action by USCIS.

[1] https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf

In this case, Petitioner has not obtained Lawful Permanent Resident status (a green card), and a final order of removal was entered against him in absentia in 2019. Therefore, even considering that Petitioner was granted SIJ status and placed in deferred action on December 9, 2022 by USCIS, the fact remains that he is a non-citizen with a final order of removal. As set forth below, his grant of SIJ status and deferred action have no impact upon the ability of ICE to detain Petitioner pursuant to 8 U.S.C.A. § 1231 pending his removal, or a decision by the immigration court that he cannot be removed.

2. Detention of Petitioner Pursuant to 8 U.S.C.A. § 1231

The INA includes a statutory framework for the detention of aliens when a final order of removal has been entered. Section 8 U.S.C.A. § 1231 of the INA provides as follow.

(a) Detention, release, and removal of aliens ordered removed

(1) Removal period

(A) In general

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) Beginning of period

The removal period begins on the latest of the following:

i. The date the order of removal becomes administratively final.

ii. If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

iii. If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Section 1231 is the only relevant provision of the INA applicable to detention, release and removal of aliens with final orders of removal in place such as Petitioner. It does not provide for "bail" (as requested by Petitioner) or a bond hearing and Petitioner is therefore not eligible for either.

Pursuant to 8 U.S.C.A. § 1231 (a)(2)(A), "[d]uring the removal period, the Attorney General *shall* detain the alien." (Emphasis added.) Despite Petitioner's argument that his removal period "expired in

2012, 90 days after his removal order became final," § 1231 does not in any way dictate that a removable alien can *only* be detained once a removal period begins (nor does Petitioner cite to any authority for this assertion). Rather, the applicable provision of the statute mandates only that the alien shall be *removed* within the removal period. Petitioner's argument that the removal period began on the date of the Petitioner's final removal order is also illogical, considering he was ordered removed *in absentia* before the immigration court at that time. He therefore could not have been detained on the date the final removal order was issued. Petitioner has not cited to any authority dictating the Court can order an alien with a final order of removal (even one being reviewed by the immigration court) be released from ICE detention if the removal period has not expired. And, because there is a stay of Petitioner's removal due to *his own* filing of a motion to reopen with the immigration court, the removal period has not run, pursuant to § 1231 (a)(1)(B)(ii). As set forth below, this is true despite Petitioner's SIJ status and grant of deferred action.

ARGUMENT

A. This Court Lacks Jurisdiction to Enjoin Petitioner's Removal

At the outset, to the extent Petitioner seeks a TRO or injunction regarding his removal, this Court lacks jurisdiction under 8 U.S.C. § 1252(g) to "hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to … execute removal orders against any alien." *See Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999).

B. Petitioner Cannot Satisfy the Requirement for a TRO or Injunctive Relief Regarding His Detention

1. Petitioner fails to establish a likelihood of success on the merits of his claims of violation of his Fourth and Fifth Amendment rights.

Petitioner's motion for a TRO and preliminary injunction does not address the underlying problems with his original petition for writ of habeas corpus, mainly the existence of a final order of removal and the fact that the removal period has not expired. Petitioner's instant motion simply reiterates the arguments from his habeas motion and does not establish a likelihood of success on the merits.

Regardless of SIJ status and the grant of deferred action, Petitioner remains an alien removable under 8 U.S.C.A. § 1231.

Multiple courts have explained that SIJ designation does not forestall arrest, detention and removal from the United States if an alien is subject to a final order of removal. For example, the U.S. Court of Appeals for the Third Circuit considered, and answered in the affirmative, the question of whether an SIJ recipient is subject to removal on account of his inadmissibility to the United States. *Cortez-Amador v. Att'y Gen.*, 66 F.4th 429, 432 (3d Cir. 2023). In that case, the individual was charged as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) which provides that "[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." While this ground of inadmissibility does not prevent an SIJ designee from applying for adjustment of status, see 8 U.S.C. § 1255(h)(2), the court found that it does apply for purposes of *removal*. *Id.* at 433. The Third Circuit reasoned that "Congress could have rationally decided that SIJS recipients should be given the opportunity to apply for adjustment of status, while also contemplating that they may be removed if their application is denied or for another appropriate basis." *Id.*, n.11.

Similarly, in *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018), the district court held that "an SIJ designation does not strip the U.S. government of all removal powers." Instead, "the government retained the power to arrest, detain, and remove Granados-Alvarado in spite of his SIJ status" because of his inadmissibility to the United States. *Id.* The court explained that "§ 1255(h) does not accord Granados-Alvarado parolee status for any purposes other than for his application for adjustment of status. … It does not make his presence lawful …". *Id.* at 362. *See also, Cruz-Gonzalez on behalf of D.M.S.C. v. Kelly*, No. CV 16-5727, 2017 WL 3390234, at *5 (E.D. Pa. Aug. 7, 2017) (rejecting argument that SIJ approval grants lawful status and prevents removal from the United States and also agreeing with government's argument that being "deemed paroled" under 8 U.S.C. § 1255(h) "does not cancel a final order of removal or an underlying basis of inadmissibility or removability."). Here, USCIS's approval of Petitioner's SIJ petition did not provide him with lawful immigration status in the United States and does not bar ICE from arresting and detaining him for purposes of removal.

Additionally, Petitioner's claim that detention is unlawful because USCIS previously issued him deferred action is without merit. Deferred action also does not provide lawful status.[2] Petitioner has cited to no authority to the contrary that is binding upon this Court. Further, USCIS, which both grants and, in some situations, may terminate, deferred action upon a non-citizen with SIJ status, is an agency separate from ICE, which executes orders of removal. Therefore, regardless of any actions by USCIS in granting SIJ status or deferred action to Petitioner, ICE is within its statutory authority to execute final orders of removal, regardless of such status, and regardless of whether deferred action status has been terminated by USCIS.

Petitioner's remaining arguments regarding violation of his due process rights rely upon the assertion that Petitioner cannot be removed while he has SIJ status or a grant of deferred action. Because this is not true, and Petitioner remains a non-citizen with a final order of removal (although stayed pending decision on his motion to reopen), his claims of due process violations fail. And, because Petitioner was detained on August 29, 2025, and *he* filed a motion to reopen his removal proceeding, not only has he not been held beyond the 90-day "removal period," he also has not been held beyond the 6-month period presumed reasonable under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner's detention is presumptively reasonable and not in violation of his due process rights.

For these reasons, Petitioner's detention is authorized by statute and there is no basis for this Court to order his release. And, because Petitioner is incorrect that his removal is "prevented by law", he cannot "prove that his removal is not reasonably foreseeable." Petitioner has put forth no evidence to support this assertion that would support a TRO or preliminary injunction in this case. Accordingly, the Court should at this time deny Petitioner's request for a temporary restraining order and/or preliminary

[2] https://www.uscis.gov/archive/uscis-to-offer-deferred-action-for-special-immigrant-juveniles

injunction because he cannot establish a likelihood for success on the merits. *Black Fire Fighters Ass'n.*, 905 F.2d at 65 ("The denial of a preliminary injunction will be upheld where the movant has failed sufficiently to establish *any one* of the four criteria.").

2. Petitioner fails to demonstrate irreparable harm.

To establish irreparable harm, a party must show that the harm is certain and so imminent as to necessitate immediate equitable relief. An injury is irreparable if it cannot be adequately compensated by money damages. *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012). Thus, "only those injuries that cannot be redressed by the application of a judicial remedy after a hearing on the merits can properly justify a preliminary injunction." *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). Equitable relief is warranted when the injury constitutes "either continuing harm or a real and immediate threat of repeated injury in the future." *Soc'y of Separationists, Inc. v. Herman*, 959 F.2d 1283, 1285 (5th Cir. 1992).

Petitioner alleges he has been separated from his family and is missing work due to his detention. Petitioner has provided no further evidence in support of his claim of irreparable harm from his detention pending review of his final removal order. However, detention alone cannot be considered an irreparable injury. If it could, all habeas petitioners could make the same argument. *See, e.g., Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) ("In addition, the Court is not persuaded that petitioner's claim of irreparable injury due to continued detention, Dkt. 1 at ¶ 15, warrants waiver of the exhaustion requirement. Because all immigration habeas petitioners could raise the same argument, if it were decisive, the prudential exhaustion requirement would always be waived—but it is not.")

Petitioner has not demonstrated to this Court that there is a substantial threat of irreparable harm if a TRO or preliminary injunction is not issued. Further, Petitioner has a pending habeas petition, which is the more proper vehicle to address his detention status. Respondents intend to file a response to that petition in due course.

3. The third and fourth factors similarly favor denial of Petitioner's motion.

Because Petitioner seeks to enjoin the action of a government agency, the third factor in assessing whether injunctive relief is appropriate, the balance of equities, and the fourth factor, the public interest, merge. *Nken v. Holder,* 556 U.S. 418, 435 (2009). In this case, both factors weigh in favor of denying injunctive relief. Any time a government's policy is blocked by court order, it suffers irreparable harm. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) ("[A]ny time a State is enjoined from effectuating statute enacted by representatives of its people, it suffers a form of irreparable injury.") (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. v. Orrin W. Foz Co.*, 434 U.S. 1245, 1351 (Rehnquist, Circuit Justice, in chamber)). That harm is more poignant in the immigration context where the Constitution assigns preeminent power to the political branches. *See Galvan v. Press*, 347 U.S. 522, 531 (1954). *See also Westley v. Harper*, No. CV 25-229, 2025 WL 592788, at *8 (E.D. La. Feb. 24, 2025) ("At bottom, this case is about the prompt execution of removal orders, and there is a strong public interest in ensuring that immigration laws are followed […] Thus, the third and fourth factors weigh against granting a preliminary injunction.") (Citations omitted.) Therefore, in this case, the third and fourth factors weight in favor of denying Petitioner a TRO or preliminary injunction.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction on the grounds that Petitioner has failed to meet the requirements for the issuance of a temporary restraining order or preliminary injunction ordering his immediate release.

Respectfully submitted,

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