

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Lopez Luvian v. Bondi

No. 25-cv-04035-TLT (N.D. Cal. June 7, 2025) · No. 25-cv-04035-TLT · Decided June 7, 2025

OPINION

Lopez Luvian v. Bondi

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MIGUEL LOPEZ LUVIAN, Case No. 25-cv-04035-TLT 8 Plaintiff,

ORDER GRANTING MOTION FOR

9 v. TEMPORARY RESTRAINING ORDER

10 PAMELA JO BONDI, et al., Re: ECF 8 11 Defendants. 12 13 We are a country of immigrants;
a land where “all of us . . . are descended from 14 immigrants and revolutionists.” FRANKLIN D.
ROOSEVELT, REMARKS TO THE DAUGHTERS OF THE 15 AMERICAN REVOLUTION
(1938). This nation once welcomed the huddled masses that sought to be 16 free, the tired that
sought refuge in our shores. Over the course of history, however, we’ve turned 17 our back to this
foundational principle—too often when it was needed most. See, e.g., *Korematsu* 18 v. *United*
States, 323 U.S. 214 (1944), abrogated by *Trump v. Hawaii*, 585 U.S. 667 (2018). The 19 facts of
this case highlight one of those moments. The inequities seep from the pages, staining 20 every
word. 21 During the Japanese internment of the 1940s, Japanese Americans were faced with
“mass 22 evacuation[s].” *Id.* at 240 n.12. Plaintiff has similarly been “evacuated” from his family
by 23 Immigration and Custom Enforcement (“ICE”). ECF 8-2, Declaration of Rosa Marie Lopez
24 (“Lopez Decl.”), at 1. Plaintiff was captured by ICE during a routine immigration check-in. *Id.*
25 He is currently interned at Golden State Annex in McFarland, California. ECF 8, at 1. Plaintiff
is 26 subject to a final order of removal, and he could be deported from the United States at any
time. 27 *Id.* 1 Plaintiff has lived in the United States for 27 years, has no criminal record, resides
with his 2 wife and three children in Livermore, California, and has been gainfully employed as a
welder at a 3 local winery for over two decades. ECF 1, ¶ 19; see also ECF 8-3 (community letters
in support). 4 He embodies the spirit of citizenship. 5 Before the Court is Plaintiff’s motion for
temporary restraining order, seeking to stay the 6 removal of Plaintiff from the United States to
Mexico pending a resolution of his case on the 7 merits under the Administrative Procedure Act
(“APA”). ECF 8. This Court need not generate 8 judicial consent like shameful legacy of
Korematsu. After review and consideration of the 9 motions, briefings, attachments and exhibits

thereto, the Court GRANTS the motion for 10 temporary restraining order. 11 The Court MAINTAINS its in-person hearing on June 12, 2025, at 11:00 a.m. as a status 12 conference. At the status conference, the parties must answer the following questions: 13 1. What is Plaintiff's current location and status? 14 2. Why was Plaintiff detained during his immigration check-in? 15 3. What clear congressional authorization can Defendants point to for non-reviewable 16 authority of termination of removal proceedings? 17 4. At what age did Plaintiff enter the United States? 18 5. What are the circumstances surrounding Plaintiff entering the United States? 19 6. The Court will ask the parties to confirm that the Plaintiff has not suffered any 20 infraction, misdemeanor, or criminal offense of any kind.

21 I. BACKGROUND

22 On June 3, 2025, Plaintiff was detained by ICE during a routine immigration check-in. 23 ECF 8-2, Lopez Decl., at 1. He is currently interned at Golden State Annex in McFarland, 24 California. ECF 8, at 1. 25 Plaintiff's situation stems from his efforts to obtain permanent resident status. ECF 1, ¶ 26 19. Plaintiff is a 48-year-old native and citizen of Mexico who has lived in the United States for 27 more than 27 years. Id. He resides with his United States citizen wife and their three children in 1 Livermore, California. Id.; see ECF 8-1, Declaration of Saad Ahmad ("Ahmad Decl."), at 1. He 2 has been gainfully employed as a welder at a local winery for over two decades. ECF 1, ¶ 19. 3 On February 15, 2007, Plaintiff filed Form I-485, application for adjustment of status, with 4 the Citizenship & Immigration Services ("USCIS"). Id. ¶ 20. USCIS denied Plaintiff's 5 application for adjustment of status. Id. ¶ 21. It determined that he was ineligible because he had 6 made a false claim to U.S. citizenship in attempting to enter the United States years earlier. Id. 7 Department of Homeland Security ("DHS") initiated removal proceedings by serving 8 Plaintiff with a Notice to Appear that charged him with removal as a noncitizen lacking a valid 9 immigrant visa or entry document, and for making a false claim to United States citizenship. Id. 10 Plaintiff conceded removability on the former charge but denied removability on the later charge. 11 Id. 12 He applied for cancellation of removal. Id. On January 22, 2008, the DHS filed a motion 13 to dismiss removal proceedings with the Immigration Court arguing that the Notice to Appear was 14 "improvidently issued" under 8 C.F.R. § 239.2(a)(6) because Plaintiff had been previously 15 removed from the United States pursuant to a valid removal order. Id. ¶ 22. On March 8, 2008, 16 the Immigration Judge ("IJ") at the San Francisco Immigration Court denied the DHS's motion to 17 dismiss because she determined that the DHS had not provided a valid reason under the 18 regulations for requesting dismissal of the proceedings. Id. ¶ 23. The DHS renewed its motion 19 and the IJ again denied it. Id. ¶¶ 24–25. 20 On November 5, 2012, after an evidentiary hearing, the IJ granted Plaintiff's application 21 for cancellation of removal as a nonpermanent resident noncitizen under Section 1229b(b)(1). Id. 22 ¶ 26. 23 DHS appealed the IJ's decision to the Board of Immigration Appeals (the "BIA"). Id. ¶ 24 27. On October 23, 2014, the BIA sustained DHS's administrative appeal from the IJ's decision 25 and dismissed Plaintiff's removal proceedings. Id. On November 1, 2016, an ICE officer served

26 Plaintiff with a Notice of Intent/Decision to Reinstate Prior Order (“Form I-871”). Id. ¶ 28. 27 Plaintiff filed a timely petition for review of his reinstated removal order with the Ninth 1 Ninth Circuit held that the court lacked jurisdiction under 8 U.S.C. § 1252(a)(5) because the BIA’s 2 decision was not a removal order. See *Lopez v. Garland*, 40 F.4th 996, 1001 (9th Cir. 2022). On 3 May 15, 2023, the Supreme Court denied the writ of certiorari from the judgment of the United 4 States Court of Appeals for the Ninth Circuit. Id. ¶ 33. 5 On May 8, 2025, Plaintiff filed the instant action against Attorney General Pamela Bondi 6 and DHS Secretary Kristi Noem. ECF 1. Plaintiff asserts (1) violation of the Administrative 7 Procedures Act (“APA”), (2) violation Plaintiff’s right to due process under the Fifth Amendment 8 of the Constitution, (3) injunctive relief, and (4) relief under the Declaratory Judgment Act. Id. ¶¶ 9 34–42. 10 On June 6, 2025, Plaintiff filed a motion for temporary restraining order, seeking to stay 11 the removal of Plaintiff from the United States to Mexico pending a resolution of his case on the 12 merits. ECF 8. The Court issued an order setting briefing schedule and hearing. ECF 11.

13 II. LEGAL STANDARD

14 “A party may seek a temporary restraining order to preserve the status quo and prevent 15 irreparable harm until a preliminary injunction hearing may be held.” Am. Fed’n of Gov’t Emps., 16 AFL-CIO v. Trump, No. 25-CV-03698, 2025 WL 1358477, at *6 (N.D. Cal. May 9, 2025). In 17 considering whether to stay a removal, “a court considers four factors: (1) whether the stay 18 applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the 19 applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will 20 substantially injure the other parties interested in the proceeding; and (4) where the public interest 21 lies.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks omitted); see *Dhillon v. 22 Mayorkas*, No. 10-cv-0723, 2010 WL 1338132, at *9 (N.D. Cal. Apr. 5, 2010) (applying *Nken* 23 factors to request for temporary restraining order). 24 The stay applicant “bears the burden of showing” that the court should exercise its 25 discretion to award this extraordinary form of equitable relief. *Nken*, 556 U.S. at 433–34. “There 26 is substantial overlap between these and the factors governing preliminary injunctions, . . . not 27 because the two are one and the same, but because similar concerns arise whenever a court order 1 determined.” Id. at 434 (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 2 (2008)). 3 The factors that are “most critical” in evaluating a request for a stay are the first and 4 second. Id. Once an applicant satisfies the first two factors, the court moves to the third and 5 fourth factors. Id. These factors merge if, as here, “the Government is the opposing party.” Id.

6 III. DISCUSSION

7 The Court will apply the *Nken* factors to determine whether to stay the deportation of 8 Plaintiff. 9 A. Likelihood of Success 10 1. The Court May Consider Plaintiff’s APA Claim 11 Plaintiff argues that this Court has authority to review the BIA’s actions because there is 12 no other adequate remedy in court. ECF 8, at 7. Plaintiff notes that he has no other avenue for 13 relief because the Ninth Circuit declined to consider his challenge for lack of jurisdiction. Id. at 6 14

(citing *Lopez v. Garland*, 40 F.4th 996 (2022)). 15 The Court agrees. “Section 704 of the APA provides for judicial review of ‘[a]gency 16 action made reviewable by statute and final agency action for which there is no other adequate 17 remedy in a court.’” *Int’l Bhd. of Teamsters v. United States DOT*, 861 F.3d 944, 952 (9th Cir. 18 2017). Plaintiff has no adequate remedy because, as explained by the Ninth Circuit, Plaintiff 19 “seeks to create a new ground for judicial review.” *Lopez*, 40 F.4th at 999 (emphasis added). This 20 new ground and lack of Ninth Circuit oversight results in Plaintiff having no adequate remedy for 21 review of the BIA’s decision. The BIA thus has unfettered discretion, which contradicts the 22 Immigration and Nationality Act’s (“INA”), explicit requirement for judicial review of a BIA’s 23 decision. 8 U.S.C. § 1252(a)(5). 24 This “new” and unique posture distinguishes this case from Ninth Circuit precedent that 25 generally precludes the Court’s review of challenges connected to the substance of removal orders. 26 See *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012); *Weyerhaeuser Co. v. U.S. Fish and 27 Wildlife Service*, 586 U.S. 9, 23 (2018) (warning that “[a] court could never determine that an 1 At this stage of the proceedings, the Court follows the “long applied a strong presumption 2 favoring judicial review of administrative action.” *Mach Mining, LLC v. E.E.O.C.*, 575 U.S. 480, 3 489 (2015). The Court, as well as “Congress[,] knows” that “legal lapses and violations occur.” 4 *Id.* 5 The question now becomes whether the BIA’s actions are “final” under the APA and, 6 therefore, reviewable by this Court. See *Am. Fed’n of Gov’t Emps.*, 2025 WL 1358477 at *20–21 7 (“Because [P]laintiff[] do[es] not allege that any action here was made reviewable by statute, the 8 threshold question is whether the challenged actions constitute ‘final agency action.’”). 9 Here, the BIA’s actions are “done and final.” *Id.* The BIA terminated Plaintiff’s removal 10 proceeding and Plaintiff has no avenue for judicial review. ECF 8, at 7; see *Lopez*, 40 F.4th at 999 11 (finding that the Court of Appeal does not have jurisdiction over the termination of removal 12 proceedings). The Court finds that it may consider Plaintiff’s APA claim as it pertains to the 13 termination of removal proceedings. 14 The Court next considers the likelihood of success of Plaintiff’s APA claim. 15 2. Plaintiff’s APA Claim Has a Likelihood of Success 16 The APA allows the Court to “hold unlawful and set aside agency action” that is 17 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. 18 § 706(2)(A). “A court may reverse an agency decision under the arbitrary and capricious standard 19 ‘only if the agency relied on factors Congress did not intend it to consider, entirely failed to 20 consider an important aspect of the problem, or offered an explanation that runs counter to the 21 evidence before the agency, or is so implausible that it could not be ascribed to a difference in 22 view or the product of agency expertise.’” 2 *Peaks Bikes LLC v. Mayorkas*, No. 24-cv-09518, 23 2025 WL 1357425, at *3 (C.D. Cal. Mar. 12, 2025) (quoting *Greater Yellowstone Coalition v. 24 Lewis*, 628 F.3d 1143, 1148 (9th Cir. 2010)). 25 Here, the Ninth Circuit’s choice to decline merit review of Plaintiff’s petition effectively 26 awarded the BIA with unheralded, non-reviewable authority to terminate deportation. Plaintiff 27 appears to have no other avenue for review. Such an outcome surrenders judicial and 1 congressional authority to an agency with

statutorily limited power. Thus, the BIA's claim to 2 unreviewable authority invites major questions. 3 "Where the statute at issue is one that confers authority upon an administrative agency," 4 there are certain "'extraordinary cases' that . . . provide a 'reason to hesitate before concluding that 5 Congress' meant to confer such authority.'" *West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 6 721 (2022) (quoting *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 7 159–60 (2000)). In such cases, the agency "must point to 'clear congressional authorization'" for 8 the agency action. *Id.* at 723 (quoting *Util. Air Regul. Grp. v. Env't Prot. Agency*, 573 U.S. 302, 9 324 (2014)). The major questions doctrine is rooted in "separation of powers principles and a 10 practical understanding of legislative intent." *Id.* 11 The major questions doctrine is analyzed under a two-prong framework. *State v. Su*, 121 12 F.4th 1, 14 (9th Cir. 2024). First, the Court asks "'whether the agency action is 'unheralded' and 13 represents a 'transformative expansion' in the agency's authority in the vague language of a long- 14 extant, but rarely used, statute." *Id.* (citing *West Virginia*, 597 U.S. at 724–25). Second, the Court 15 asks "if the regulation is of 'vast economic and political significance' and 'extraordinary' enough 16 to trigger the doctrine." *Id.* (citing *West Virginia*, 597 U.S. at 716, 721). "If both prongs are met, 17 the major questions doctrine applies, and [the Court] should greet the agency's assertion of 18 authority with 'skepticism' and require the agency to identify 'clear congressional authorization' 19 for its action." *Id.* (citing *West Virginia*, 597 U.S. at 724). 20 Based on the limited record, Plaintiff has met both prongs of the major questions doctrine. 21 The BIA claims to "unheralded" unreviewable authority as to the termination of deportation 22 proceedings. The BIA bases this authority on the extant statutes 8 U.S.C. §§ 1252(a)(5) and 23 1252(a)(9) which provide for judicial review of removal proceedings. Title 8 United States Code 24 § 1252(a)(5) provides: 25 Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas 26 corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance 27 with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision 1 In addition, this code section contains a "zipper clause" that requires consolidation of all 2 "questions of law and fact . . . arising from any action taken or proceeding brought to remove an 3 [noncitizen]" into a petition for review before the appropriate court of appeals. 8 U.S.C. § 4 1252(b)(9). These statutes are silent as to the judicial review of the termination of deportation 5 proceedings. 6 The BIA's claim to non-reviewable authority to terminate of deportation proceedings 7 represents transformative expansion to its authority. The APA provides for judicial review to 8 "final agency action for which there is no other adequate remedy in a court." *Int'l Bhd. of 9 Teamsters*, 861 F.3d at 952. The BIA's claim to non-reviewable authority represents an extreme 10 expansion of agency power. Accordingly, the Court finds the first prong of the major questions 11 doctrine is met. 12 The Court moves to the second prong. Here, the BIA's claim to non-reviewable authority 13 "is of 'vast economic and political significance' and 'extraordinary' enough to trigger the 14 doctrine." *Su*, 121 F.4th at 14. With no

avenue for judicial review, the BIA's claimed authority 15 could result in the change of status for millions of noncitizens. 16 Courts have previously found that agency action that could result in the change of status 17 for millions of noncitizens is extraordinary and of vast economic and political significance. For 18 example, in *Texas v. United States* (Texas I), the Fifth Circuit determined whether DHS had the 19 statutory authority to implement Deferred Action for Parents of Americans and Lawful Permanent 20 Residents ("DAPA") program. *Texas v. United States*, 809 F.3d 134, 181–82 (5th Cir. 2015), as 21 revised (Nov. 25, 2015). The DAPA program would result in the change of status of 4.3 million 22 noncitizens. *Id.* at 181. The court found that this agency action was of "deep economic and 23 political significance" that required clear congressional authorization. *Id.* The court, applying 24 the *expressio unius est exclusio alterius* canon of construction, held that 8 U.S.C. § 1324a(h)(3) 25 did not give DHS the authority to implement DAPA. *Id.* at 182–83. 26 Similarly, in *Texas v. United States* (Texas II), the Fifth Circuit turned to whether DHS has 27 the statutory authority to implement the Deferred Action for Childhood Arrivals ("DACA") 1 would result in the change of status of 1.3 million noncitizens, it was of "deep economic and 2 political significance" that required clear congressional authorization. *Id.* (internal quotations 3 omitted). Relying on Texas I, the Fifth Circuit again concluded that DHS did not have statutory 4 authority to implement DACA. *Id.* at 527–28. 5 Here, the Court finds that the BIA's claim to non-reviewable authority is of vast economic 6 and political significance and extraordinary enough to trigger the doctrine. Plaintiff has brought 7 the action under APA because he has no other avenue for relief. Based on the limited record, the 8 Court finds that 8 U.S.C. §§ 1252(a)(5) and 1252(a)(9) do not contain clear congressional intent to 9 vest the BIA with unfettered, non-reviewable authority over the termination of deportation 10 proceedings. The Court, therefore, greets this claim of authority with "skepticism." *Su*, 121 F.4th 11 at 14. At this stage of the proceedings, Plaintiff has demonstrated a likelihood of success on his 12 APA claim. 13 B. Plaintiff Will Experience Irreparable Harm Absent a Stay 14 Plaintiff must next show that he will be irreparably injured absent a stay. *Nken*, 556 U.S. 15 at 433. Plaintiff cites to ICE's Facilitation of Return Policy ("Directive"). The Court takes 16 judicial notice of this Directive. See *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 524 n.9 17 (N.D. Cal. 2017) (taking judicial notice of ICE reports contained on official government websites). 18 Under the directive, ICE will facilitate a deported noncitizen's return to the United States if the 19 noncitizen's pending appeal before the U.S. Supreme Court or a U.S. court of appeals prevails. 20 ECF 8, at 9. However, here, Plaintiff does not have a pending appeal before the U.S. Supreme 21 Court or a U.S. Court of Appeals. Thus, if Plaintiff is deported, he will have no avenue of return 22 to the United States. 23 Deportation may also result in the violation of Plaintiff's right to "stay and live and work 24 in this land and freedom." *Landon v. Plascencia*, 459 U.S. 21, 34 (1982) (quoting *Bridges v. 25 Wixon*, 326 U.S. 135 (1945)). His "interest here is, without question, a weighty one." *Id.* 26 Plaintiff has a right to "not be separated from one's immediate family." *Ching v. Mayorkas*, 725 27 F.3d 1149, 1157 (9th Cir. 2013). Plaintiff's family would suffer extreme

financial and emotional 1 criminal history. Under these circumstances and based on the limited record, the Court finds that 2 Plaintiff has demonstrated irreparable harm. 3 C. Public Interest and Injury to the Government 4 The final two factors merge if the “the Government is the opposing party.” *Nken*, 556 U.S. 5 at 433. Although the government may an interest in the prompt execution of removal orders, there 6 “is [also] a public interest in preventing [noncitizens] from being wrongfully removed” *Id.* 7 The Court is keenly aware of the realities that noncitizens face today. Here, Plaintiff was 8 detained as he was actively complying with orders to check in with ICE, a requirement that he 9 complied with for the last seventeen years. ECF 8-2, Lopez Decl., at 1. He had been attempting 10 to gain immigration status for almost twenty years. *Id.* And for almost twenty-seven years, 11 Plaintiff had been working and paying taxes. *Id.* He is more than his status—Plaintiff is a 12 husband and father; a grandfather and uncle; a homeowner and taxpayer; and a colleague and 13 friend. See generally ECF 8-2, Lopez Decl.; ECF 8-3 (community letters in support). Still, for 14 ICE, all of Plaintiff’s years of compliance was not enough. 15 This nation has experienced waves of exclusion that ripple to this day. Indeed, fear has 16 been based on the color of one’s skin and the assumed location of birth. The Court will not blink 17 at the circumstances of today or yesterday. “No one benefits from ignorance.” *Students of Fair 18 Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181, 407 (2023) (Jackson, J., 19 dissenting). 20 As shown here, the public interest would be served by requiring judicial oversight of BIA 21 decisions that affect noncitizens. As shown in this case, Plaintiff: paid his taxes, paid his 22 mortgage, provided for his family, worked for an employer, and served his community. 23 Accordingly, at this stage of the proceedings, the Court finds that the government and 24 public interest in removal does not outweigh Plaintiff’s showing for the first two factors.

25 IV. CONCLUSION

26 For the reasons stated above, the Court GRANTS the motion for temporary restraining 27 order. The Court MAINTAINS its in-person hearing on June 12, 2025, at 11:00 a.m. as a status 1 Defendants and their officers, agents, servants, employees, attorneys, and all those who are 2 || in active concert or participation with them are hereby TEMPORARILY RESTRAINED from 3 || removing Plaintiff from the United States, until the merits of Plaintiffs’ forthcoming motion for a 4 || preliminary injunction is resolved. IT IS FURTHER ORDERED that Defendants shall 5 immediately provide a copy of this Order to any person or entity that may be subject to any 6 || provision of this Order, including their officers, agents, servants, employees, attorneys, and all 7 those who are in active concert or participation with them or have any involvement in the removal 8 of Plaintiff from the United States. 9 Plaintiff must file a motion for preliminary injunction by June 20, 2025. 10 This Order resolves ECF 8. 11 IT IS SO ORDERED. 12 || Dated: June 7, 2025 14 United States District Judge 16 18 19 20 21 22 23 24 25 26 27 28