

FILED: April 28, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-1440
(A208-981-942)

FAUSTO JERARDO AMILCAR HERRERA-JUAREZ, a/k/a Carlos Ramirez, a/k/a
Carlos Hernandez-Ramirez, a/k/a Juarez Herrera

Petitioner

v.

TODD BLANCHE, Acting Attorney General

Respondent

O R D E R

Upon consideration of submissions relative to the motion for stay of removal, the court grants the motion. Further, upon consideration of respondent's motion to dismiss the appeal, the court defers ruling on the motion pending assignment to a panel.

Judge King and Judge Gregory voted to grant the motion. Judge Quattlebaum voted to deny the motion and wrote a dissent from the order granting the stay.

For the Court

/s/ Nwamaka Anowi, Clerk

QUATTLEBAUM, Circuit Judge, dissenting:

Fausto Herrera-Juarez may obtain a stay pending appeal only if he establishes a strong likelihood of success overall. He hasn't, so I would deny the stay.

Like all stay applicants, Herrera-Juarez must proceed under *Nken v. Holder*, 556 U.S. 418 (2009). *Nken* considers four factors—“(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). An applicant must show a likelihood of success on the merits. *See id.* at 435 (“Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest.”). And a mere possibility of success won't do. *See id.* at 434 (“It is not enough that the chance of success on the merits be better than negligible.” (internal quotation marks and citation omitted)). Rather, the applicant has the burden to show that his likelihood of success is “strong.” *Id.*

And that's true regardless of irreparable harm. A strong case of irreparable harm doesn't permit a court to grant a stay if the movant hasn't shown a likelihood of succeeding on the merits. *See Nken*, 556 U.S. at 433 (“A stay is not a matter of right, even if irreparable injury might otherwise result.” (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926))); *see also Trump v. Casa, Inc.*, 606 U.S. 831, 841 (2025) (citing *Nken* for the proposition that “for a stay application to be granted, the applicant must make a strong

showing that it is likely to succeed on the merits” (citation modified)); *Curry v. Baker*, 479 U.S. 1301, 1302 (1986) (Powell, J., in chambers) (“It is no doubt true that . . . the applicant here will suffer irreparable injury. This fact alone is not sufficient to justify a stay . . .”).

Herrera-Juarez claims the government’s decision to remove him to a third country with which he has no relationship violates the Fifth Amendment’s Due Process Clause, the Eighth Amendment’s prohibition against cruel and unusual punishment and § 1231(b)(2) of the Immigration and Nationality Act. But, in assessing his likelihood of success on the merits of those claims, we must also evaluate whether we have jurisdiction to review his underlying petition, and whether his individual claims are barred by a pending Massachusetts federal class action of which he is a member.¹ In other words, Herrera-Juarez’s ultimate success depends on prevailing on each of these issues.

Our current record is limited. But based on what we have at this time, I think the first two issues—jurisdiction and the effect of the pending class action—are close. Herrera-Juarez may win, but it’s far from obvious. On the third issue—the merits of his due process

¹ *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-10676-BEM, 2026 WL 521557, at *3 (D. Mass. Feb. 25, 2026) (reiterating the class certified consists of “[a]ll individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5) or 238(b) of the [Immigration and Nationality Act (“INA”)] (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed”).

claim—I don't think he has shown a likelihood of success.² And since Herrera-Juarez must prevail on all three issues, he cannot show an overall likelihood of success. Under *Nken*, we must deny the stay.

As to the second *Nken* factor, I appreciate Herrera-Juarez's irreparable harm argument. But even if irreparable harm overwhelmingly cuts in Herrera-Juarez's favor, without showing an overall strong likelihood of success, he hasn't satisfied *Nken*.³

Assume, however, that I'm wrong in my assessment of Herrera-Juarez's likelihood of success. Assume Herrera-Juarez is likely to win on all three issues. That still doesn't mean he is likely to succeed overall because Herrera-Juarez's likelihood of overall success is affected by the likelihood of success on each independent issue.⁴ And this impact is not that in some vague sense it is generally harder to prevail when there are multiple issues in play. Just as the sum of $2 + 2$ is undeniably 4, in assessing probabilities, the movant's success overall is the product of his likelihood of success on each independent issue. *See Am. Fed'n of Tchrs. v. Bessent*, 152 F.4th 162, 170 (4th Cir. 2025) (“[The plaintiffs'] likelihood of success overall is the product of their probability of success on each of the

² Herrera-Juarez's due process claim is his strongest, and his Eighth Amendment and statutory claims add little to his overall likelihood of success.

³ And because Herrera-Juarez hasn't shown a strong likelihood of success on the merits, I do not address the third and fourth *Nken* factors. *See Nken*, 556 U.S. at 435.

⁴ Based on the record we have, the three issues here appear to be independent.

independent, dispositive issues. And as probabilities are multiplied, their product shrinks rapidly.”).

I recognize some of my good colleagues on our court bristle at this. *See Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, No. 25-1411, 2026 WL 969670, at *1 (4th Cir. Apr. 10, 2026).⁵ Frankly, I don’t understand why. With genuine respect, this is not a matter of opinion. It’s not a matter of judicial philosophy. It’s a mathematical truth.⁶ If an applicant must prevail on three independent issues, his chance on each must be very high. Otherwise, he can’t succeed overall.

To explain, consider Steph Curry. He may be the greatest shooter in the history of basketball. His career free throw percentage is 91.2%. But as good as Curry is, if he takes

⁵ While I am bound by the majority opinion in that case and, in fact, concurred in the judgment, the majority opinion did not evaluate the plaintiffs’ likelihood of success on the merits, instead finding plaintiffs had not shown irreparable harm. *See Am. Fed’n of State*, 2026 WL 969670, at *7–8. So, any discussion of the “multiplicative issue” was not essential to the court’s holding and, thus, dicta. *See id.* at *15 (Richardson, J., concurring in judgment) (noting the opinion “expressly stat[es] that the decision does not rely on” consideration of likelihood of success on the merits and instead finds no showing of irreparable harm).

⁶ Mathematical principles, unlike other principles from other disciplines, are not up for debate—they are truths, not matters of opinion. In fact, their truth is not even based on human observation of physical properties. They are principles we discover, not develop. For these reasons, some have concluded that mathematical principles have divine characteristics. *See e.g.*, David Berlinski, *One Two Three Absolutely Elementary Mathematics* 14–15 (2011).

ten foul shots, the likelihood that he makes all ten is only 39.8%.⁷ That's because each shot he takes is independent of any other.

Here, the same principles apply. If we were to assume that Herrera-Juarez has a 75% likelihood of success on each issue, he only has a 42% likelihood of overall success.⁸

I recognize that reasonable minds might not agree with my assessments of likelihood of success on the three independent issues at play here. But on these novel issues, no one could credibly claim that Herrera-Juarez has a sufficiently high likelihood on each issue to show an overall likelihood of success.

With respect, I vote to deny the motion for a stay.

⁷ To explain, Curry has a 91.2% chance of making a foul shot each time he steps to the line. To calculate the likelihood of making ten shots in a row, you'd calculate 0.912^{10} . Put another way, you multiply $0.912 \times 0.912 \times 0.912 \times 0.912 \times 0.912 \times 0.912 \times 0.912 \times 0.912 \times 0.912 \times 0.912$. The result is 0.398 or 39.8%.

⁸ His overall probability of success is the product of 0.75^3 ($0.75 \times 0.75 \times 0.75$). The resulting 0.42 represents a 42% likelihood of success overall.