SUPREME COURT OF THE UNITED STATES

No. 08–681

JEAN MARC NKEN, PETITIONER *v.* ERIC H. HOLDER, JR., ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[April 22, 2009]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

It takes time to decide a case on appeal. Sometimes a little; sometimes a lot. "No court can make time stand still" while it considers an appeal, *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U. S. 4, 9 (1942), and if a court takes the time it needs, the court's decision may in some cases come too late for the party seeking review. That is why it "has always been held, . . . that as part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment pending the outcome of an appeal." *Id.*, at 9–10 (footnote omitted). A stay does not make time stand still, but does hold a ruling in abeyance to allow an appellate court the time necessary to review it.

This case involves a statutory provision that sharply restricts the circumstances under which a court may issue an injunction blocking the removal of an alien from this country. The Court of Appeals concluded, and the Government contends, that this provision applies to the granting of a stay by a court of appeals while it considers the

legality of a removal order. Petitioner disagrees, and maintains that the authority of a court of appeals to stay an order of removal under the traditional criteria governing stays remains fully intact, and is not affected by the statutory provision governing injunctions. We agree with petitioner, and vacate and remand for application of the traditional criteria.

I

Jean Marc Nken, a citizen of Cameroon, entered the United States on a transit visa in April 2001. In December 2001, he applied for asylum under 8 U. S. C. §1158, withholding of removal under §1231(b)(3), and deferral of removal under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 3, S. Treaty Doc. No. 100–20, p. 20, 1465 U. N. T. S. 85, see 8 CFR §208.17 (2008). In his application, Nken claimed he had been persecuted in the past for participation in protests against the Cameroonian Government, and would be subject to further persecution if he returns to Cameroon.

An Immigration Judge denied Nken relief after concluding that he was not credible. The Board of Immigration Appeals (BIA) affirmed, and also declined to remand for consideration of Nken's application for adjustment of status based on his marriage to an American citizen. After the BIA denied a motion to reopen, Nken filed a petition for review of the BIA's removal order in the Court of Appeals for the Fourth Circuit. His petition was denied. Nken then filed a second motion to reopen, which was also denied, followed by a second petition for review, which was denied as well.

Nken filed a third motion to reopen, this time alleging that changed circumstances in Cameroon made his persecution more likely. The BIA denied the motion, finding that Nken had not presented sufficient facts or evidence of

changed country conditions. Nken again sought review in the Court of Appeals, and also moved to stay his deportation pending resolution of his appeal. In his motion, Nken recognized that Fourth Circuit precedent required an alien seeking to stay a removal order to show by "clear and convincing evidence" that the order was "prohibited as a matter of law," 8 U. S. C. §1252(f)(2). See *Teshome-Gebreegziabher* v. *Mukasey*, 528 F. 3d 330 (CA4 2008). Nken argued, however, that this standard did not govern. The Court of Appeals denied Nken's motion without comment. App. 74.

Nken then applied to this Court for a stay of removal pending adjudication of his petition for review, and asked in the alternative that we grant certiorari to resolve a split among the Courts of Appeals on what standard governs a request for such a stay. Compare *Teshome-Gebreegziabher*, *supra*, at 335, and *Weng* v. *U. S. Attorney General*, 287 F. 3d 1335 (CA11 2002), with *Arevalo* v. *Ashcroft*, 344 F. 3d 1 (CA1 2003), *Mohammed* v. *Reno*, 309 F. 3d 95 (CA2 2002), *Douglas* v. *Ashcroft*, 374 F. 3d 230 (CA3 2004), *Tesfamichael* v. *Gonzales*, 411 F. 3d 169 (CA5 2005), *Bejjani* v. *INS*, 271 F. 3d 670 (CA6 2001), *Hor* v. *Gonzales*, 400 F. 3d 482 (CA7 2005), and *Andreiu* v. *Ashcroft*, 253 F. 3d 477 (CA9 2001) (en banc). We granted certiorari, and stayed petitioner's removal pending further order of this Court. *Nken* v. *Mukasey*, 555 U. S. ___ (2008).

II

The question we agreed to resolve stems from changes in judicial review of immigration procedures brought on by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, which substantially amended the Immigration and Nationality Act (INA), 8 U. S. C. §1101 *et seq*. When Congress passed IIRIRA, it "repealed the old judicial-review scheme set forth in [8 U. S. C.] §1105a and instituted a new (and

significantly more restrictive) one in 8 U. S. C. §1252." *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 475 (1999) (*AAADC*). The new review system substantially limited the availability of judicial review and streamlined all challenges to a removal order into a single proceeding: the petition for review. See, *e.g.*, 8 U. S. C. §1252(a)(2) (barring review of certain removal orders and exercises of executive discretion); §1252(b)(3)(C) (establishing strict filing and briefing deadlines for review proceedings); §1252(b)(9) (consolidating challenges into petition for review). Three changes effected by IIRIRA are of particular importance to this case.

Before IIRIRA, courts of appeals lacked jurisdiction to review the deportation order of an alien who had already left the United States. See §1105a(c) (1994 ed.) ("An order of deportation or of exclusion shall not be reviewed by any court . . . if [the alien] has departed from the United States after the issuance of the order"). Accordingly, an alien who appealed a decision of the BIA was typically entitled to remain in the United States for the duration of judicial review. This was achieved through a provision providing most aliens with an automatic stay of their removal order while judicial review was pending. See §1105a(a)(3) ("The service of the petition for review . . . shall stay the deportation of the alien pending determination of the petition by the court, unless the court otherwise directs").

IIRIRA inverted these provisions to allow for more prompt removal. First, Congress lifted the ban on adjudication of a petition for review once an alien has departed. See IIRIRA §306(b), 110 Stat. 3009–612 (repealing §1105a). Second, because courts were no longer prohibited from proceeding with review once an alien departed, see *Dada* v. *Mukasey*, 554 U. S. 1, ___ (2008) (slip op., at 19–20), Congress repealed the presumption of an automatic stay, and replaced it with the following: "Service of the petition on the officer or employee does not stay the re-

moval of an alien pending the court's decision on the petition, unless the court orders otherwise." 8 U. S. C. §1252(b)(3)(B) (2006 ed.).

Finally, IIRIRA restricted the availability of injunctive relief:

> "Limit on injunctive relief
>
> "(1) In general
>
> "Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by [IIRIRA], other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.
>
> "(2) Particular cases
>
> "Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law." §1252(f).

This provision, particularly subsection (f)(2), is the source of the parties' disagreement.

III

The parties agree that courts of appeals considering a petition for review of a removal order may prevent that order from taking effect and therefore block removal while adjudicating the petition. They disagree over the standard a court should apply in deciding whether to do so. Nken argues that the "traditional" standard for a stay applies. Under that standard, a court 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 issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton* v. *Braunskill*, 481 U. S. 770, 776 (1987).

The Government disagrees, arguing that a stay is simply a form of injunction, or alternatively that the relief petitioner seeks is more accurately characterized as injunctive, and therefore that the limits on injunctive relief set forth in subsection (f)(2) apply. Under that provision, a court may not "enjoin" the removal of an alien subject to a final removal order, "unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law." 8 U. S. C. §1252(f)(2). Mindful that statutory interpretation turns on "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole," *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 341 (1997), we conclude that the traditional stay factors—not §1252(f)(2)—govern a request for a stay pending judicial review.

A

An appellate court's power to hold an order in abeyance while it assesses the legality of the order has been described as "inherent," preserved in the grant of authority to federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," All Writs Act, 28 U. S. C. §1651(a). See *In re McKenzie*, 180 U. S. 536, 551 (1901). The Court highlighted the historic pedigree and importance of the power in *Scripps-Howard*, 316 U. S. 4, holding in that case that Congress's failure expressly to confer the authority in a statute allowing appellate review should not be taken as an implicit denial of that power.

The Court in *Scripps-Howard* did not decide what "criteria . . . should govern the Court in exercising th[e] power" to grant a stay. *Id.*, at 17. Nor did the Court consider under what circumstances Congress could deny that authority. See *ibid.* The power to grant a stay pending review, however, was described as part of a court's "traditional equipment for the administration of justice." *Id.*, at 9–10. That authority was "firmly imbedded in our judicial system," "consonant with the historic procedures of federal appellate courts," and "a power as old as the judicial system of the nation." *Id.*, at 13, 17.

The authority to hold an order in abeyance pending review allows an appellate court to act responsibly. A reviewing court must bring considered judgment to bear on the matter before it, but that cannot always be done quickly enough to afford relief to the party aggrieved by the order under review. The choice for a reviewing court should not be between justice on the fly or participation in what may be an "idle ceremony." *Id.*, at 10. The ability to grant interim relief is accordingly not simply "[a]n historic procedure for preserving rights during the pendency of an appeal," *id.*, at 15, but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.

At the same time, a reviewing court may not resolve a conflict between considered review and effective relief by reflexively holding a final order in abeyance pending review. A stay is an "intrusion into the ordinary processes of administration and judicial review," *Virginia Petroleum Jobbers Assn.* v. *Federal Power Comm'n*, 259 F. 2d 921, 925 (CADC 1958) (*per curiam*), and accordingly "is not a matter of right, even if irreparable injury might otherwise result to the appellant," *Virginian R. Co.* v. *United States*, 272 U. S. 658, 672 (1926). The parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the prompt execu-

tion of orders that the legislature has made final.

B

Subsection (f)(2) does not by its terms refer to "stays" but instead to the authority to "enjoin the removal of any alien." The parties accordingly begin by disputing whether a stay is simply a type of injunction, covered by the term "enjoin," or a different form of relief. An injunction and a stay have typically been understood to serve different purposes. The former is a means by which a court tells someone what to do or not to do. When a court employs "the extraordinary remedy of injunction," *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 312 (1982), it directs the conduct of a party, and does so with the backing of its full coercive powers. See Black's Law Dictionary 784 (6th ed. 1990) (defining "injunction" as "[a] court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury").

It is true that "'[i]n a general sense, every order of a court which commands or forbids is an injunction; but in its accepted legal sense, an injunction is a judicial process or mandate operating *in personam*.'" *Id.*, at 800 (8th ed. 2004) (quoting 1 H. Joyce, A Treatise on the Law Relating to Injunctions §1, pp. 2–3 (1909)). This is so whether the injunction is preliminary or final; in both contexts, the order is directed at someone, and governs that party's conduct.

By contrast, instead of directing the conduct of a particular actor, a stay operates upon the judicial proceeding itself. It does so either by halting or postponing some portion of the proceeding, or by temporarily divesting an order of enforceability. See Black's, *supra*, at 1413 (6th ed. 1990) (defining "stay" as "a suspension of the case or some designated proceedings within it").

A stay pending appeal certainly has some functional

overlap with an injunction, particularly a preliminary one. Both can have the practical effect of preventing some action before the legality of that action has been conclusively determined. But a stay achieves this result by temporarily suspending the source of authority to act—the order or judgment in question—not by directing an actor's conduct. A stay "simply suspend[s] judicial alteration of the status quo," while injunctive relief "grants judicial intervention that has been withheld by lower courts." *Ohio Citizens for Responsible Energy, Inc.* v. *NRC*, 479 U. S. 1312, 1313 (1986) (SCALIA, J., in chambers); see also *Brown* v. *Gilmore*, 533 U. S. 1301, 1303 (2001) (Rehnquist, C. J., in chambers) ("[A]pplicants are seeking not merely a stay of a lower court judgment, but an injunction against the enforcement of a presumptively valid state statute"); *Turner Broadcasting System, Inc.* v. *FCC*, 507 U. S. 1301, 1302 (1993) (same) ("By seeking an injunction, applicants request that I issue an order *altering* the legal status quo").

An alien seeking a stay of removal pending adjudication of a petition for review does not ask for a coercive order against the Government, but rather for the temporary setting aside of the source of the Government's authority to remove. Although such a stay acts to "ba[r] Executive branch officials from removing [the applicant] from the country," *post*, at 7 (ALITO, J., dissenting), it does so by returning to the status quo—the state of affairs before the removal order was entered.* That kind of stay, "relat[ing]

---

*The dissent maintains that "[a]n order preventing an executive officer from [enforcing a removal order] does not 'simply suspend judicial alteration of the status quo,' " but instead "blocks executive officials from carrying out what they view as proper enforcement of the immigration laws." *Post*, at 7 (quoting *Ohio Citizens for Responsible Energy, Inc.* v. *NRC*, 479 U. S. 1312, 1313 (1986) (SCALIA, J., in chambers)). But the relief sought here would simply suspend *administrative* alteration of the status quo, and we have long recognized that such

only to the conduct or progress of litigation before th[e] court[,] ordinarily is not considered an injunction." *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U. S. 271, 279 (1988); see Fed. Rule App. Proc. 8(a)(1)(A) (referring to interim relief from "the judgment or order of a district court pending appeal" as "a stay"). Whether such a stay might technically be called an injunction is beside the point; that is not the label by which it is generally known. The sun may be a star, but "starry sky" does not refer to a bright summer day. The terminology of subsection (f)(2) does not comfortably cover stays.

This conclusion is reinforced by the fact that when Congress wanted to refer to a stay pending adjudication of a petition for review in §1252, it used the word "stay." In subsection (b)(3)(B), under the heading "Stay of order," Congress provided that service of a petition for review "does not stay the removal of an alien pending the court's decision on the petition, unless the court orders otherwise." 8 U. S. C. §1252(b)(3)(B). By contrast, the language of subsection (f) says nothing about stays, but is instead titled "Limit on injunctive relief," and refers to the authority of courts to "enjoin the removal of any alien."

---

temporary relief from an administrative order—just like temporary relief from a court order—is considered a stay. See *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U. S. 4, 10–11 (1942).

The dissent would distinguish *Scripps-Howard* on the ground that Nken does not really seek to stay a final order of removal, but instead seeks "to enjoin the Executive Branch from enforcing his removal order pending judicial review of an entirely separate order [denying a motion to reopen]." *Post*, at 4, n. But a determination that the BIA should have granted Nken's motion to reopen would necessarily extinguish the finality of the removal order. See Tr. of Oral Arg. for Respondent 42 ("[I]f the motion to reopen is granted, that vacates the final order of removal and, therefore, there is no longer a final order of removal pursuant to which the alien could be removed"). The relief sought here is properly termed a "stay" because it suspends the effect of the removal order.

§1252(f)(2).

"[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 432 (1987) (internal quotation marks omitted). This is particularly true here, where subsections (b)(3)(B) and (f)(2) were enacted as part of a unified overhaul of judicial review procedures.

Subsection (b)(3)(B) changed the basic rules covering stays of removal, and would have been the natural place to locate an amendment to the traditional standard governing the grant of stays. Under the Government's view, however, Congress placed such a provision four subsections later, in a subsection that makes no mention of stays, next to a provision prohibiting classwide injunctions against the operation of removal provisions. See 8 U. S. C. §1252(f)(1) (permitting injunctions only "with respect to the application of such provisions to an individual alien"); *AAADC*, 525 U. S., at 481–482. Although the dissent "would not read too much into Congress' decision to locate such a provision in one subsection rather than in another," *post*, at 8, the Court frequently takes Congress's structural choices into consideration when interpreting statutory provisions. See, *e.g.*, *Florida Dept. of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U. S. ___, ___ (2008) (slip op., at 13).

The Government counters that petitioner's view "fails to give any operative effect to Section 1252(f)(2)." Brief for Respondent 32. Initially, this argument undercuts the Government's textual reading. It is one thing to propose that "enjoin" in subsection (f)(2) covers a broad spectrum of court orders and relief, including both stays and more typical injunctions. It is quite another to suggest that Congress used "enjoin" to refer *exclusively* to stays, so that a failure to include stays in subsection (f)(2) would render

the provision superfluous. If nothing else, the terms are by no means synonymous.

Leaving that aside, there is something to the Government's point; the exact role of subsection (f)(2) under petitioner's view is not easy to explain. Congress may have been concerned about the possibility that courts would enjoin application of particular provisions of the INA, see 8 U. S. C. §1252(f)(1) (prohibiting injunctions "other than with respect to the application of [Section IV of the INA] to an individual alien"), or about injunctions that might be available under the limited habeas provisions of subsection (e). Or perhaps subsection (f)(2) was simply included as a catchall provision raising the bar on any availability (even unforeseeable availability) of "the extraordinary remedy of injunction." *Weinberger*, 456 U. S., at 312. In any event, the Government's point is not enough to outweigh the strong indications that subsection (f)(2) is not reasonably understood to be directed at stays.

C

Applying the subsection (f)(2) standard to stays pending appeal would not fulfill the historic office of such a stay. The whole idea is to hold the matter under review in abeyance because the appellate court lacks sufficient time to decide the merits. Under the subsection (f)(2) standard, however, a stay would only be granted after the court in effect *decides* the merits, in an expedited manner. The court would have to do so under a standard—"clear and convincing evidence"—that does not so much preserve the availability of subsequent review as render it redundant. Subsection (f)(2), in short, would invert the customary role of a stay, requiring a definitive merits decision earlier rather than later.

The authority to grant stays has historically been justified by the perceived need "to prevent irreparable injury to the parties or to the public" pending review. *Scripps-*

Howard, 316 U. S., at 9. Subsection (f)(2) on its face, however, does not allow any consideration of harm, irreparable or otherwise, even harm that may deprive the movant of his right to petition for review of the removal order. Subsection (f)(2) does not resolve the dilemma stays historically addressed: what to do when there is insufficient time to resolve the merits and irreparable harm may result from delay. The provision instead requires deciding the merits under a higher standard, without regard to the prospect of irreparable harm.

In short, applying the subsection (f)(2) standard in the stay context results in something that does not remotely look like a stay. Just like the Court in *Scripps-Howard*, we are loath to conclude that Congress would, "without clearly expressing such a purpose, deprive the Court of Appeals of its customary power to stay orders under review." *Id.*, at 11. Subsection (f)(2) would certainly deprive courts of their "customary" stay power. Our review does not convince us that Congress did that in subsection (f)(2). The four-factor test is the "traditional" one, *Hilton*, 481 U. S., at 777, and the Government has not overcome the "presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." *Isbrandtsen Co.* v. *Johnson*, 343 U. S. 779, 783 (1952). We agree with petitioner that an alien need not satisfy the demanding standard of §1252(f)(2) when asking a court of appeals to stay removal pending judicial review.

IV

So what standard does govern? The question presented, as noted, offers the alternative of "'the traditional test for stays,'" 555 U. S., at ___, but the parties dispute what that test is. See Brief for Respondent 46 ("[T]he four-part standard requires a more demanding showing than petitioner suggests"); Reply Brief for Petitioner 26 ("The Government

argues . . . that the [stay] test should be reformulated").

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Virginian R. Co.*, 272 U. S., at 672. It is instead "an exercise of judicial discretion," and "[t]he propriety of its issue is dependent upon the circumstances of the particular case." *Id.*, at 672–673; see *Hilton*, *supra*, at 777 ("[T]he traditional stay factors contemplate individualized judgments in each case"). The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. See, *e.g.*, *Clinton* v. *Jones*, 520 U. S. 681, 708 (1997); *Landis* v. *North American Co.*, 299 U. S. 248, 255 (1936).

The fact that the issuance of a stay is left to the court's discretion "does not mean that no legal standard governs that discretion. . . . '[A] motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" *Martin* v. *Franklin Capital Corp.*, 546 U. S. 132, 139 (2005) (quoting *United States* v. *Burr*, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C. J.)). As noted earlier, those legal principles have been distilled into consideration of 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 issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton*, *supra*, at 776. There is substantial overlap between these and the factors governing preliminary injunctions, see *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. ___, ___ (2008) (slip op., at 14); not because the two are one and the same, but because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined.

The first two factors of the traditional standard are the

most critical. It is not enough that the chance of success on the merits be "better than negligible." *Sofinet* v. *INS*, 188 F. 3d 703, 707 (CA7 1999) (internal quotation marks omitted). Even petitioner acknowledges that "[m]ore than a mere 'possibility' of relief is required." Reply Brief for Petitioner 21 (quoting Brief for Respondent 47). By the same token, simply showing some "possibility of irreparable injury," *Abbassi* v. *INS*, 143 F. 3d 513, 514 (CA9 1998), fails to satisfy the second factor. As the Court pointed out earlier this Term, the "'possibility' standard is too lenient." *Winter*, *supra*, at ___ (slip op., at 12).

Although removal is a serious burden for many aliens, it is not categorically irreparable, as some courts have said. See, *e.g.*, *Ofosu* v. *McElroy*, 98 F. 3d 694, 699 (CA2 1996) ("[O]rdinarily, when a party seeks [a stay] pending appeal, it is deemed that exclusion is an irreparable harm"); see also Petitioner's Emergency Motion for a Stay 12 ("[T]he equities particularly favor the alien facing deportation in immigration cases where failure to grant the stay would result in deportation before the alien has been able to obtain judicial review").

The automatic stay prior to IIRIRA reflected a recognition of the irreparable nature of harm from removal before decision on a petition for review, given that the petition abated upon removal. Congress's decision in IIRIRA to allow continued prosecution of a petition after removal eliminated the reason for categorical stays, as reflected in the repeal of the automatic stay in subsection (b)(3)(B). It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury. Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal. See Brief for Respondent 44.

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. These factors merge when the Government is the opposing party. In considering them, courts must be mindful that the Government's role as the respondent in every removal proceeding does not make the public interest in each individual one negligible, as some courts have concluded. See, *e.g.*, *Mohammed*, 309 F. 3d, at 102 (Government harm is nothing more than "one alien [being] permitted to remain while an appeal is decided"); *Ofosu*, *supra*, at 699 (the Government "suffers no offsetting injury" in removal cases).

Of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm. But that is no basis for the blithe assertion of an "absence of any injury to the public interest" when a stay is granted. Petitioner's Emergency Motion for a Stay 13. There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and "permit[s] and prolong[s] a continuing violation of United States law." *AAADC*, 525 U. S., at 490. The interest in prompt removal may be heightened by the circumstances as well—if, for example, the alien is particularly dangerous, or has substantially prolonged his stay by abusing the processes provided to him. See *ibid.* ("Postponing justifiable deportation (in the hope that the alien's status will change—by, for example, marriage to an American citizen—or simply with the object of extending the alien's unlawful stay) is often the principal object of resistance to a deportation proceeding"). A court asked to stay removal cannot simply assume that "[o]rdinarily, the balance of hardships will weigh heavily in the applicant's favor." *Andreiu*, 253 F. 3d, at 484.

* * *

The Court of Appeals did not indicate what standard it applied in denying Nken a stay, but Circuit precedent required the application of §1252(f)(2). Because we have concluded that §1252(f)(2) does not govern, we vacate the judgment of the Court of Appeals and remand for consideration of Nken's motion for a stay under the standards set forth in this opinion.

It is so ordered.