

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 State of Arizona, et al.,  
10 Petitioner,

No. CV-25-00468-TUC-RM (MAA)

**ORDER**

11 v.

12 Pam Bondi, et al.,  
13 Respondents.  
14

15 On October 2, 2025, the Court granted Petitioner’s Application for a Writ of Habeas  
16 Corpus Ad Prosequendum and directed the Clerk of Court to issue a writ pursuant to 28  
17 U.S.C. § 2241(c)(5) requiring the Attorney General, by and through the United States  
18 Marshals Service, to produce Julio Cesar Aguirre for an Arraignment and Initial  
19 Appearance, as well as witness depositions, in Pima County Superior Court case number  
20 CR20253494-001. (Doc. 32.) Currently pending before the Court is Respondents’ Motion  
21 to Stay Order, in which Respondents ask the Court to stay its October 2, 2025 Order until  
22 the Department of Justice determines whether to file an appeal. (Doc. 34.) Petitioner  
23 opposes the Motion. (Doc. 36.) For the following reasons, the Motion to Stay will be  
24 denied.

25 **I. Legal Standard**

26 A stay is “an exercise of judicial discretion,” the propriety of which “is dependent  
27 upon the circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433 (2009).  
28 In determining whether to grant a stay, the Court considers four factors: (1) whether the

1 stay applicant has made a strong showing that he is likely to succeed on the merits; (2)  
2 whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the  
3 stay will substantially injure the other parties interested in the proceeding; and (4) where  
4 the public interest lies.” *Id.* at 434.

## 5 II. Discussion

6 Respondents argue that they are likely to succeed on the merits because 28 U.S.C.  
7 § 2241(c)(5) does not authorize the relief granted in the Court’s October 2, 2025 Order.  
8 (Doc. 34 at 2-4.) The Court has already considered and rejected this argument multiple  
9 times. (*See* Docs. 23, 32.) As this Court has already explained, Respondents’ argument is  
10 contrary to Supreme Court and Ninth Circuit precedent. *See Barber v. Page*, 390 U.S. 719,  
11 724 (1968) (“in the case of a prospective witness currently in federal custody, 28 U.S.C. §  
12 2241(c)(5) gives federal courts the power to issue writs of habeas corpus ad testificandum  
13 at the request of state prosecutorial authorities”); *United States v. Hooker*, 607 F.2d 286,  
14 288-89 (9th Cir. 1979) (28 U.S.C. § 2241(c)(5) “allows the transfer of federal prisoners to  
15 face state charges”); *Morgan v. United States*, 380 F.2d 686, 699 (9th Cir. 1967) (a writ of  
16 habeas corpus ad prosequendum under 28 U.S.C. § 2241(c)(5) “is proper to bring a prisoner  
17 under incarceration by state or federal court to trial for alleged violations of laws”).  
18 Respondents urge the Court to ignore these clear statutory interpretations as “extraneous  
19 dicta,” but Respondents fail to cite any binding caselaw that limits the Court’s authority  
20 under § 2241(c)(5) in the manner that Respondents propose.

21 Respondents further argue that the federal government has priority of jurisdiction—  
22 also known as primary custody—over Aguirre, and that the executive branch has sole  
23 discretionary authority to decide whether to relinquish primary custody. (*Id.* at 4-7.) As  
24 this Court has previously noted, the State of Arizona first arrested Aguirre, and traditionally  
25 “the sovereign which first arrests an individual acquires priority of jurisdiction.” *United*  
26 *States v. Warren*, 610 F.2d 680, 684-85 (1980). Nevertheless, the Court’s October 2, 2025  
27 Order did not address the issue of priority of jurisdiction, and the Order does not require  
28 Respondents to relinquish primary custody. Accordingly, it is irrelevant whether the

1 executive branch has sole discretionary authority to relinquish primary custody.  
2 Respondents have failed to establish a likelihood of success on the merits.

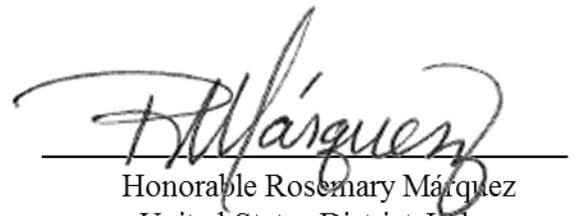
3 The remaining factors also weigh against granting a stay of the Court’s October 2,  
4 2025 Order. Because the relief granted in the Court’s October 2, 2025 Order is statutorily  
5 authorized, Respondents cannot show irreparable injury based on a purported violation of  
6 separation of powers principles. (*See* Doc. 34 at 9.) Furthermore, Respondents’ concerns  
7 regarding the impact of parallel criminal proceedings are speculative, and Respondents  
8 have failed to offer any explanation or justification regarding why they refused to specify  
9 those concerns until the filing of their Motion to Stay. (*See id.* at 8-9.) Petitioner has  
10 established that a stay would harm other interested parties and the public interest. There  
11 are victims in the state criminal proceedings against Aguirre who are not victims in the  
12 federal proceedings. Those victims are awaiting justice, and two of them are elderly and  
13 facing health issues. The well-known saying, “justice delayed is justice denied,” applies  
14 with special force here, where a delay in the state prosecution risks the loss of victim  
15 testimony that is critical to the State’s ability to prosecute Aguirre.

16 Respondents have failed to show that a stay of the Court’s October 2, 2025 Order is  
17 appropriate, and Respondents’ repetition of already rejected arguments is not well taken.

18 **IT IS ORDERED** that the Motion to Stay Order (Doc. 34) is **denied**.

19 Dated this 15th day of October, 2025.

20  
21  
22  
23  
24  
25  
26  
27  
28



---

Honorable Rosemary Márquez  
United States District Judge