APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 19-2148

DED RRANXBURGAJ, PLAINTIFF-APPELLANT

v.

CHAD WOLF[1], ET AL., DEFENDANTS-APPELLEES

Argued: August 5, 2020
Decided and Filed: August 26, 2020

On Appeal from the United States District Court for the Eastern District of Michigan
No. 18-11832—Denise Page Hood, Chief Judge.

OPINION

BEFORE: GIBBONS, GRIFFIN, AND THAPAR, CIRCUIT JUDGES.

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[1] Chad Wolf, as the acting Secretary for the Department of Homeland Security has been automatically substituted as a defendant pursuant to Federal Rule of Civil Procedure 25(d).

GRIFFIN, Circuit Judge.

Plaintiff Ded Rranxburgaj filed this suit after United States Immigration and Customs Enforcement (ICE) denied his request for a temporary stay of his removal order. He claims that ICE's decision to deny his application on procedural grounds was contrary to law. However, the district court dismissed Rranxburgaj's complaint for lack of subject-matter jurisdiction, and although our reasoning differs, we agree that the lower court lacked jurisdiction and affirm.

I.

In 2001, plaintiff Ded Rranxburgaj and his wife Flora Rranxburgaj fled their native country of Albania and sought asylum in the United States. However, their asylum application was denied, and in 2006 an Immigration Judge ordered them removed. Three years later, the Board of Immigration Appeals dismissed their appeal. But while those proceedings were ongoing, Flora developed multiple sclerosis. As a consequence, the government placed the Rranxburgajs under orders of supervision. *See* 8 C.F.R. § 241.5. Thus, while the government could still execute their removal orders at any time, the Rranxburgajs were allowed to continue living in the United States.

Things changed in October 2017 when plaintiff reported for one of his regular check-ins with ICE in Detroit, Michigan. An agent with ICE told Rranxburgaj that the agency intended to remove him in January 2018 and instructed him to purchase a plane ticket. Plaintiff complied, purchasing airfare to Albania with a January 25, 2018 departure date, which he presented to ICE at a subsequent check-in on November 30, 2017. About

a week later, Rranxburgaj filed an application for a temporary stay of removal. Specifically, he requested a one-year stay of removal, citing Flora's "advanced" multiple sclerosis. He explained that Flora was "entirely dependent on [him] for everything, including the most basic needs." If he were removed, Rranxburgaj stated, it would "be a death sentence for [his] wife." The application included his wife's medical records, thirteen years' of tax returns, and more than eighty letters of support.

Weeks passed, but ICE did not act on Rranxburgaj's application. Less than three weeks before his scheduled removal, Rranxburgaj attended another check-in, and yet ICE did not address his application. Instead, the agency told him only to return for another check-in, eight days before his removal date. Rather than return for that last check-in, Rranxburgaj moved himself and his family into the Central United Methodist Church in Detroit, Michigan and claimed sanctuary. Church leaders held a press conference, and Rranxburgaj made a public statement that he was seeking sanctuary from removal to care for his wife.

The following day, ICE announced that it considered Rranxburgaj a "fugitive" based on his failure to attend the check-in as scheduled. The agency also sent a letter to Rranxburgaj's counsel, which indicated that it had denied Rranxburgaj's application for a temporary stay of removal as "moot," because his "willful failure to comply with the terms of his supervised release" rendered him a "fugitive from ICE." Rranxburgaj asked ICE to reconsider, but the agency held firm to its position

that Rranxburgaj's failure to report disentitled him from discretionary relief.

Rranxburgaj then filed suit in the United States District Court for the Eastern District of Michigan in June 2018 to "challenge the refusal" of the agency to "adjudicate on the merits his application for a stay of removal." He invoked the Administrative Procedure Act, claiming that the court had authority to compel agency action which had been "unreasonably withheld or delayed[,]" and asserted that the court should set aside the agency determination that he was a fugitive as contrary to law.[2] As relief, he asked the court to enjoin the defendants from removing him, declare the agency's actions arbitrary and capricious, and issue an injunction compelling the defendants to consider the merits of his stay application.

ICE moved to dismiss Rranxburgaj's suit for lack of subject-matter jurisdiction and for failure to state a claim. Fed. R. Civ. P. 12(b). It relied on 8 U.S.C. § 1252(g), which provides that:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any

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[2] Plaintiff also sought a writ of mandamus on the equitable theory that he had a right to a timely merits decision on his stay application. Because he does not raise any argument related to this claim in his statement of issues or the body of his brief on appeal, we deem it forfeited. *See, e.g.*, *United States v. Calvetti*, 836 F.3d 654, 664 (6th Cir. 2016).

> cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

The agency reasoned that § 1252(g) applied because the action arose "from the decision to deny [plaintiff's] application for a stay, and hence execute his removal order." The district court, however, granted ICE's motion to dismiss for lack of jurisdiction on other grounds. It ruled that 8 U.S.C. § 1252(a)(2) and (a)(5) deprived it of jurisdiction because ICE's denial of Rranxburgaj's request for a stay was directly related to his final removal order. The district court then entered judgment, and Rranxburgaj timely appealed.

II.

We review de novo a district court's dismissal of a complaint for lack of subject-matter jurisdiction. *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 860 (6th Cir. 2020).

At the outset, the parties appear to agree that the federal question statute, 28 U.S.C. § 1331, confers jurisdiction to federal courts to review agency action under the terms of the Administrative Procedure Act. *See, e.g.*, *Jama v. Dep't of Homeland Security*, 760 F.3d 490, 494 (6th Cir. 2014). They disagree, however, on whether § 1252(g) of the REAL ID Act of 2005 divested the district court of subject-matter jurisdiction over Rranxburgaj's claims brought under that authority.

The district court relied on two provisions of the REAL ID Act, 8 U.S.C. § 1252(a)(2) and (a)(5), to

hold that it lacked jurisdiction over Rranxburgaj's claims. However, those provisions reflect Congress's decision to "channel judicial review of an alien's claims *related to his or her final order of removal* through a petition for review at the court of appeals." *Elgharib v. Napolitano*, 600 F.3d 597, 600 (6th Cir. 2010) (emphasis added). In his complaint, Rranxburgaj did not challenge the validity of his final order of removal. He instead challenged only the agency's denial, on procedural grounds, of his application for a temporary stay of removal. That does not fall within the ambit of § 1252(a)(2) and (a)(5). *See id.* at 605. On appeal, the parties agree that the district court was mistaken to rely on § 1252(a)(2) and (a)(5). They instead focus on 8 U.S.C. § 1252(g), which further refines the subject-matter jurisdiction of the federal courts over claims arising out of administrative action in the immigration setting. More specifically, they contest whether Rranxburgaj's claims "aris[e] from the decision or action by the Attorney General to . . . execute [a] removal order[]." 8 U.S.C. § 1252(g). We hold they do and, therefore, we lack jurisdiction.

First, we acknowledge that in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999) (hereinafter *AADC*), the Supreme Court interpreted the operative language of § 1252(g) narrowly, reasoning that the jurisdictional bar applied only to the three "discrete actions," *id.* at 482, listed in the statute: "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders[.]" *Id.* at 483. The Court reasoned that Congress had good reason to shield these actions from judicial review because the government had increasingly begun exercising its discretion to abandon deportation and removal

actions, either for humanitarian reasons or for its own convenience. "Since no generous act goes unpunished, however, the [agency's] exercise of this discretion opened the door to litigation in instances where the [agency] chose *not* to exercise it." *Id.* at 484. Therefore, the Court reasoned that § 1252(g) "seem[ed] clearly designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed." *Id.* at 485. The *AADC* Court thus concluded that the petitioners' challenge to the Attorney General's decision to "commence proceedings" against them fell squarely within § 1252(g)'s jurisdictional bar. *Id.* at 492.

A few years later, our court interpreted *AADC* in considering whether § 1252(g) prevented a district court from exercising jurisdiction over a petition for a writ of habeas corpus, challenging the decision of the Attorney General to deny a request for a temporary stay of deportation. *Moussa v. Jenifer*, 389 F.3d 550, 554 (6th Cir. 2004). We held that it did. The court began with the observation that Moussa "specifically challenge[d] the Attorney General's refusal . . . to grant [him] a stay of deportation." *Id.* at 553. This, we said, was "a decision that is wholly within the discretion of the Attorney General" and as such, it was "directly part of a decision to execute a removal order." *Id.* at 554. Accordingly, we held that Moussa's attempt to "enjoin the Attorney General from executing a valid

order of deportation" was "protected from subsequent judicial review under § 1252(g)."[3] *Id.*

Our review did not end there because at the time, the Supreme Court interpreted § 1252(g) to exclude habeas petitions raising colorable constitutional or statutory claims under 28 U.S.C. § 2241. *See INS v. St. Cyr*, 533 U.S. 289 (2001). Therefore, the "final part [of] our inquiry" was whether Moussa had asserted a colorable claim under the standard announced in *St. Cyr*. *Moussa*, 389 F.3d at 554–55. In the end, we concluded that *Moussa* had not presented such a claim and affirmed the district court's judgment for lack of subject-matter jurisdiction. *Id.* at 555. Importantly, this exception to the jurisdictional bar in § 1252(g) no longer exists. "The REAL ID Act was enacted . . . in response to the Supreme Court's decision in *INS v. St. Cyr* . . . which held that under 28 U.S.C. § 2241, federal courts have jurisdiction over habeas petitions brought by aliens in custody pursuant to a deportation order." *Almuhtaseb v. Gonzales*, 453

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[3] On this point, *Moussa* appears consistent with every other circuit to have considered the issue. *See, e.g.*, *Sharif v. Ashcroft*, 280 F.3d 786, 787 (7th Cir. 2002) ("A request for a stay of removal 'arises from' the Attorney General's decision . . . to execute a removal order."); *Garcia-Herrera v. Asher*, 585 F. App'x 439, 440 (9th Cir. 2014) (mem. op.) ("[Petitioner] challenges ICE's decision not to delay his removal pending the adjudication of his application for relief under DACA. . . . [T]his constitutes a challenge to ICE's decision to execute a removal order."); *Barrios v. Att'y Gen.*, 452 F. App'x 196, 198 (3d Cir. 2011) ("The BIA's denial of a stay of removal falls within its power to execute a removal order."); *McCloskey v. Keisler*, 248 F. App'x 915, 917 (10th Cir. 2007) ("The Government argues that we lack jurisdiction to review Ms. McCloskey's petition because the essence of her challenge is ICE's refusal to continue deferring her removal. We agree.").

F.3d 743, 746–47 (6th Cir. 2006) (footnote and citation omitted); *see also Jaber v. Gonzales*, 486 F.3d 223, 230 (6th Cir. 2007) ("The REAL ID Act of 2005 clearly eliminated a habeas petition as a means for judicial review of a removal order, abrogating any holding in *St. Cyr* to the contrary.").

Turning back to the matter at hand, the government argues that *Moussa* controls, and that the district court therefore lacked subject-matter jurisdiction over Rranxburgaj's complaint. We agree. By challenging ICE's decision to deny his request for a stay of removal, Rranxburgaj is seeking to enjoin the Attorney General from executing a valid order of removal. *Moussa* held that decision is "protected from subsequent judicial review under § 1252(g)," so the district court lacked jurisdiction over plaintiff's complaint. 389 F.3d at 554.

III.

Rranxburgaj offers several arguments for why *Moussa* does not resolve this case. They are unpersuasive.

First, he focuses on the last section of *Moussa*, arguing that he has raised a pure question of law regarding ICE's decision to disentitle him to discretionary relief, so he may avoid § 1252(g). But as we have already explained, *Moussa* relied on *St. Cyr,* which is no longer precedent.[4] We are aware of

[4] Along these same lines, Rranxburgaj's reliance on United *States v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004) (en banc) is unpersuasive. That case also predates the REAL ID Act, and we find no support beyond *St. Cyr* for its assertion that courts have jurisdiction for "consideration of a purely legal question," which would otherwise fall within the scope of § 1252(g). *Id.* at 1155–56. To the extent that *Hovsepian* relied on *Spencer Enterprises*

no other exception to § 1252(g) that would allow for review of pure questions of law. *Cf. Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018) (holding that § 1252(g) does not violate the Suspension Clause).

Plaintiff also cites *Arce v. United States*, 899 F.3d 796 (9th Cir. 2012) (per curiam), as authority that the district court had jurisdiction to hear a legal challenge to the Attorney General's authority to execute a removal order. We find *Arce* distinguishable. There, the government's violation of a judicial stay of removal resulted in an alien's removal from the United States. *Id.* at 799. The alien plaintiff brought a Federal Tort Claims Act claim for damages suffered as result of the removal. The Ninth Circuit held that this claim fell outside the scope of § 1252(g) because "the stay of removal temporarily suspend[ed] the source of the [government's] authority to act." *Id.* at 800 (first alteration in original, internal quotation marks and citation omitted). In other words, while the stay was in place, the government "totally lack[ed] the [statutory] discretion to effectuate a removal order." *Id.* at 800–01. Therefore, the Ninth Circuit concluded that the government's "decision or action to violate a court order staying removal . . . f[ell] outside" of § 1252(g)'s "jurisdiction-stripping reach." *Id.* at 800. Here, the government violated no such order, and Rranxburgaj's challenge instead goes directly to ICE's decision to execute an order of removal. Accordingly, we are not persuaded by *Arce*

Inc. v. United States, 345 F.3d 683, 689–90 (9th Cir. 2003), for that proposition, it is contrary to our precedent. *See CDI Info. Servs., Inc. v. Reno*, 278 F.3d 616, 620 (6th Cir. 2002).

that the district court had subject-matter jurisdiction.[5]

Finally, Rranxburgaj argues that we should disregard *Moussa* either because it runs afoul of *AADC*'s narrow interpretation of § 1252(g) or because it is distinguishable. We disagree. Our court considered and applied *AADC* in *Moussa*, and we view that decision to be a faithful application of the Supreme Court's guidance. Nor is *Moussa* distinguishable; we discern no principled difference between the denial of an application for a stay of removal on the merits and a denial on procedural grounds. In either case, the decision to deny a temporary stay of removal arises directly from the decision of the Attorney General to execute a removal order, so it is rendered unreviewable by § 1252(g).

IV.

Based on the record before us, no one could dispute that Ded Rranxburgaj has made significant contributions to our society since first arriving in the United States nineteen years ago. He has raised his children here, legally worked and paid taxes, and committed no crime. Moreover, he has demonstrated admirable devotion to his wife as she fights a terrible illness. But as a court of limited jurisdiction, we adjudicate cases as Congress sees fit to authorize. In the REAL ID Act, Congress decided that, as a matter of public policy, we do not

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[5] We also observe that the Eighth Circuit came to a contrary conclusion on an identical claim in *Silva v. United States*, 866 F.3d 938, 940 (8th Cir. 2017) (holding that a claim challenging the execution of a removal order, in violation of a judicial stay, fell within § 1252(g)).

have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order—like the ones presented in this suit. Accordingly, whether or not we agree with ICE's decision to execute plaintiff's removal order (and deny his application to temporarily stay that order), those decisions are not reviewable by the federal courts.

The judgment of the district court is therefore affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

No. 18-11832

DED RRANXBURGAJ, PETITIONER

v.

KRISTJEN NIELSEN, ET AL., RESPONDENTS

Filed: September 12, 2019

ORDER GRANTING RESPONDENTS' MOTION TO DISMISS [#8]

Hon. DENISE PAGE HOOD

I. BACKGROUND

On June 8, 2018, Plaintiff Ded Rranxburgaj ("Rranxburgaj") filed a petition for the issuance of a writ of mandamus in order to compel Respondents Kristjen Nielsen ("Nielsen"), Jefferson Sessions, III ("Sessions"), Rebecca Adducci ("Adducci"), and Thomas D. Homan ("Homan") (collectively, "Respondents") to adjudicate on the merits his application for a stay of removal or deferral of removal. (Doc # 1) This matter is before the Court on Respondents' Motion to Dismiss for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted pursuant to

Fed.R.Civ.P. 12(b)(1) and (6), filed on August 31, 2018. (Doc # 8) Rranxburgaj filed a Response on October 12, 2018. (Doc # 12) Respondents filed their Reply on October 26, 2018. (Doc # 13)

At the time of this hearing, Nielsen was the acting Secretary of the United States Department of Homeland Security. Nielsen was responsible for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. 296, 116 Stat. 2135 (Nov. 25, 2002). Nielsen was the ultimate legal custodian of the Petitioner, and was being sued by Rranxburgaj in her official capacity.

Sessions was the Attorney General of the United States. At the time this lawsuit was filed Sessions was responsible for administering and enforcing the immigration laws pursuant to section 103 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(a). Rranxburgaj was suing Sessions in his official capacity to the extent that 8 U.S.C. § 1103(g) vested him with authority over the immigration laws.

Adducci is the Field Office Director of the Immigration and Customs Enforcement ("ICE") (Department of Homeland Security) office in Detroit, Michigan. Adducci oversees custody determinations made by ICE within the metropolitan Detroit and greater Michigan region. Rranxburgaj is suing Adducci in her official capacity.

Homan was the acting Director of ICE. Homan was responsible for the administration and enforcement of the immigration laws pursuant to section 402 of the Homeland Security Act of 2002,

107 Pub. L. 296, 116 Stat. 2135 (Nov. 25, 2002). Rranxburgaj is suing Homan in his official capacity.

The facts are as follows. Rranxburgaj, a native of Albania, has been on Order of Supervision since 2010. (Doc # 1, Pg ID 2, 6) He was initially a derivative beneficiary on his wife, Flora Rranxburgaj's I-589 application for asylum, withholding of removal, and CAT relief. (Doc # 1, Pg ID 3) An Immigration Judge denied this application on June 13, 2006. (*Id.*) Mrs. Rranxburgaj's appeal to the Board of Immigration Appeals was dismissed in a decision dated May 5, 2009. (*Id.*)

ICE has allowed Rranxburgaj to remain in the United States so that he could tend to his ill wife. (*Id.* at 2-3.) Mrs. Rranxburgaj has also been on Order of Supervision, along with the couple's son, who is currently a Deferred Action for Childhood Arrivals grantee. (*Id.* at 3.) ICE has not asked Mrs. Rranxburgaj to depart the United States because her medical condition prevents her from being able to travel. (*Id.*)

On or about December 8, 2017, Rranxburgaj applied for a stay of removal. (Doc # 1-1) ICE denied Rranxburgaj's stay request as moot on January 17, 2018, because on that date, Rranxburgaj failed to report to ICE as mandated by his Order of Supervision. (Doc # 1-3) Rranxburgaj's January 17, 2018 report date was his last report date prior to his scheduled deportation. (Doc # 1, Pg ID 7) Before Rranxburgaj's scheduled deportation date, he went into sanctuary at a local Detroit church out of fear that he would be detained if he reported to ICE. (*Id.*) ICE was fully informed of Rranxburgaj's whereabouts and location when he entered sanctuary. (*Id.*) Rranxburgaj and his family

currently reside in the church that he entered in January 2018. (Doc # 1, Pg ID 9)

Rranxburgaj sought reconsideration of the stay denial by letter on January 23, 2018. (Doc # 1-4) On January 24, 2018, Robert Lynch ("Lynch"), Deputy Field Office Director, verbally affirmed the denial of Rranxburgaj's reconsideration request over the phone, and alleged that Rranxburgaj is a fugitive. (Doc # 1, Pg ID 8) Rranxburgaj sought further reconsideration of ICE's verbal affirmance, and sent Lynch a follow up letter dated February 21, 2018. (Doc # 1-5) On April 20, 2018, after having received no response to this inquiry, Rranxburgaj's attorney, George P. Mann ("Mann") emailed Adducci and asked for a response. (Doc # 1-6) ICE Deputy Field Office Director, Todd Shanks called Mann on April 23, 2018, and explained that ICE's denial of Rranxburgaj's stay request would not be reversed. (Doc # 1, Pg ID 9)

Rranxburgaj now seeks from this Court a merits adjudication of his application for a stay of removal. (*Id.*) Rranxburgaj argues that he is entitled to a merits adjudication pursuant to 5 U.S.C. § 706. (*Id.* at 18.) Rranxburgaj contends that he would be successful if his stay request was adjudicated on the merits because he believes that ICE wrongly categorized him as a fugitive. (*Id.*)

II. ANALYSIS

A. Standards of Review

1. *Rule 12(b)(1)*

Rule 12(b)(1) of the Federal Rules of Civil Procedure provides for dismissal for lack of jurisdiction over the subject matter. Fed. R. Civ. P. 12(b)(1). Motions under Rule 12(b)(1) fall into two

general categories: facial attacks and factual attacks. *See RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996). A facial attack challenges the pleading itself. In considering this type of attack, the court must take all material allegations in the complaint as true, and construe them in the light most favorable to the non-moving party. *Id.* Where subject matter jurisdiction is factually attacked, the plaintiff bears the burden of proving jurisdiction to survive the motion, and "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Id.* In a factual attack of subject matter jurisdiction, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.*

2. *Rule 12(b)(6)*

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for a motion to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). This type of motion tests the legal sufficiency of the plaintiff's complaint. *Davey v. Tomlinson*, 627 F. Supp. 1458, 1463 (E.D. Mich. 1986). When reviewing a motion to dismiss under Rule 12(b)(6), a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Directv Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). A court, however, need not accept as true legal conclusions or unwarranted factual inferences." *Id.* (quoting *Gregory v. Shelby Cnty.*, 220 F.3d 443, 446 (6th Cir. 2000)). "[L]egal

conclusions masquerading as factual allegations will not suffice." *Edison v. State of Tenn. Dep't of Children's Servs.*, 510 F.3d 631, 634 (6th Cir. 2007).

As the Supreme Court has explained, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level. . . ." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted); *see LULAC v. Bresdesen*, 500 F.3d 523, 527 (6th Cir. 2007). To survive dismissal, the plaintiff must offer sufficient factual allegations to make the asserted claim plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The court primarily considers the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint may also be taken into account. *Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir. 2001).

B. Subject Matter Jurisdiction

Respondents argue that the Court lacks subject matter jurisdiction to adjudicate Rranxburgaj's claim. Respondents contend that since Rranxburgaj's action arises from ICE's decision to deny his application for a stay and execute his removal order, 8 U.S.C. § 1252(g) precludes the Court from ruling on Rranxburgaj's claim. Respondents also claim that the Sixth Circuit has determined that refusal to issue a stay of

deportation is a decision to execute a removal order as contemplated by § 1252(g), and therefore, in these instances, judicial review is precluded. *See Moussa v. Jenifer*, 389 F.3d 550, 554 (6th Cir. 2004).

Rranxburgaj argues that the Court has subject matter jurisdiction pursuant to various statutes. First, Rranxburgaj claims that 28 U.S.C. § 1331 gives this Court subject matter jurisdiction because this case involves questions of federal law, specifically the Fugitive Disentitlement Doctrine, Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., and the APA, 5 U.S.C. § 551 et seq. Second, Rranxburgaj asserts that pursuant to 28 U.S.C. § 1361, this Court has subject matter jurisdiction since the Court has original jurisdiction over cases involving mandamus requests. Third, Rranxburgaj argues that the Court has subject matter jurisdiction based on 5 U.S.C. §701 because this statute allows the Court to review relevant questions of law in relation to agency actions. Fourth, Rranxburgaj contends that under 28 U.S.C. §§ 2201 and 2202, the Court has subject matter jurisdiction because it has the authority to grant Rranxburgaj declaratory relief.

Additionally, Rranxburgaj claims that § 1252(g) does not preclude this Court from ruling on his action because he alleges that his claim does not arise from ICE's "decision or action . . . to commence proceedings, adjudicate cases, or execute removal orders against any alien." Rranxburgaj argues that instead, his claim stems from ICE's decision to declare that his application for a stay of removal was moot because of his alleged fugitive status. Rranxburgaj further contends that *Moussa* is distinguishable from the instant case since his

claim is based on a pure legal question. According to Rranxburgaj, in *Moussa*, the court denied an alien's request to review the denial of his application for a stay of removal, not whether the alien's stay of removal request should have been declared moot.

Where subject matter jurisdiction is challenged pursuant to Rules 12(b)(1) and 12(b)(6), courts must consider the 12(b)(1) motion first, since the Rule 12(b)(6) challenge becomes moot if it is determined that subject matter jurisdiction is lacking. *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). The Court finds that here, it lacks the subject matter jurisdiction necessary to rule on Rranxburgaj's claim, and therefore, Respondents' Rule 12(b)(6) challenge is moot. The REAL ID Act of 2005 divests district courts of subject matter jurisdiction to review removal orders of any alien. 8 U.S.C. § 1252(a)(2); *Elgharib v. Napolitano*, 600 F.3d 597, 600-601 (6th Cir. 2010). Only Courts of Appeals have jurisdiction to review an Order of Removal. 8 U.S.C. § 1252(a)(5).

Rranxburgaj argues that this Court should adjudicate his case because it involves a legal question regarding whether he is a fugitive under the Fugitive Disentitlement Doctrine. While Rranxburgaj might have a legitimate legal question, this is not the proper forum to address Rranxburgaj's claim. Rranxburgaj's ultimate claim is that he "seeks a merits adjudication of his application for a stay of removal." (Doc # 1, Pg ID 9) The stay of removal is directly related to Rranxburgaj's final removal order. Since Rranxburgaj's claim pertains to a final removal

order, he must pursue his claim with the Court of Appeals. *See Elgharib*, 600 F.3d at 600-601.

III. CONCLUSION

For the reasons set forth above,

IT IS HEREBY ORDERED that Respondents' Motion to Dismiss (Doc # 8) is **GRANTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED** with prejudice.

DATED: September 12, 2019

/s/ Denise Page Hood
DENISE PAGE HOOD
Chief Judge

APPENDIX C

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

January 17, 2018

Mr. George P. Mann
3505 West 14 Mile Rd. STE 20
Farmington Hills, MI 48331

Re: Application for a Stay of Deportation or Removal—A095855793

Dear Mr. Mann,

This letter is in response to an Application for a Stay of Deportation or Removal filed on December 8, 2017, by your office on behalf of Mr. Ded Rranxburgaj. The basis of this application is that Mr. Rranxburgaj would like to remain in the United States for a period of one year in order to continue to provide care and financial support for his wife.

The removal of individuals who are subject to a final order of removal but have not complied with their legal obligation to depart the United States is a Department of Homeland Security Enforcement Priority. On June 13, 2006, an Immigration Judge ordered your client removed from the United States. On May 5, 2009, the Board. of Immigration Appeals dismissed your client's appeal thus making the order of removal administratively final.

Your request for a stay of removal is denied, as moot, as your client failed to report as required on January 17, 2018 to the ICE-ERO Non-Detained

Office located at 260 Mt. Elliott, Detroit, MI 48207. On January 9, 2018, ICE-ERO made your client and an attorney from your office, Ms. Oana Marina, fully aware of your client's requirement to report on January 17, 2018. Your client's willful failure to comply with the terms of his supervised release have resulted in him being appropriately categorized as a fugitive from ICE.

Specific questions may be directed to Supervisory Detention and Deportation Officer Alvedy at (313) 394-2510.

Sincerely,

[signature]

Robert Lynch
Deputy Field Office Director