UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-CV-24078-MOORE/Elfenbein

JOSE SERRANO,

Petitioner,

v.

JUAN LOPEZ-VEGA, In his official capacity as Acting Director, Miami Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement;

TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;

Respondents.

RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Respondents,[1] pursuant to Federal Rule of Civil Procedure 65 and Local Rule 7.1(c), and the Court's Paperless Order of September 15, 2025 (ECF No. 11), submit the following response in opposition to Petitioner's Motion for Temporary Restraining Order (ECF No. 10) ("Motion"). As set forth more fully below, the Court should deny the Motion.

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[1] Neither Juan Lopez-Vega nor Todd M. Lyons is a proper party in this action. A writ of habeas corpus must "be directed to the person having custody of the person detained." *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. As Petitioner is currently detained at Krome Service Processing Center ("Krome"), a detention facility in Miami, Florida, his immediate custodian is Charles Parra, the Assistant Field Office Director (AFOD) in charge of Krome. Accordingly, the only proper Respondent in this case would be AFOD Parra, in his official capacity.

I. BACKGROUND

Petitioner, Jose Serrano Salgado is a native and citizen of Ecuador, and a subject of interest of the Ecuadorian National Police. *See* Exh. A, Record of Deportable/Inadmissible Alien (I-213), August 7, 2025. On May 19, 2021, Petitioner was admitted to the United States at Miami, Florida as a nonimmigrant visitor for pleasure (B2) with authorization to remain in the United States for a temporary period not to exceed November 18, 2021. *See* Exh. A; *see also* Declaration of Deportation Officer Bryan Galo ("Galo Decl."), attached hereto, ¶ 7. Petitioner remained in the United States longer than permitted and, on August 7, 2025, he was apprehended by Homeland Security Investigations and served with a Notice to Appear ("NTA"). *See* Exh. A; Galo Decl., ¶ 8. The NTA charged Petitioner with removability pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act ("INA") in that after admission as a nonimmigrant, Petitioner remained in the United States longer than permitted. *See* Galo Decl., ¶ 8; Exh. B, NTA. Petitioner is detained at the Krome Service Processing Center ("Krome"). *See* Galo Decl., ¶ 5.

On August 7, 2025, U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") issued a Notice of Custody Determination, Form I-286, denying Petitioner bond. *See* Galo Decl., ¶ 9; Exh. C, I-286. On August 9, 2025, ICE filed the NTA with the immigration court. *See* Galo Decl., ¶ 10; Exh. B.

On August 18, 2025, Petitioner was scheduled for a custody redetermination hearing and a master hearing before the immigration court. *See* Galo Decl., ¶ 11. On the same day, the Court took no action on the custody redetermination. *See* Galo Decl., ¶ 12; Exh. D, Order Taking No Action on Bond, dated August 18, 2025. The master hearing was rescheduled to September 11, 2025, at the request of Petitioner's counsel to allow for attorney preparation time. *See* Galo Decl., ¶ 12.

On August 21, 2025, the Attorney General's Office in Ecuador formally charged Petitioner with murder. *See* Exh. E, Report of the Attorney General's Office in Ecuador; *see also* Galo Decl., ¶ 13. The charges allege that Petitioner is the mastermind behind the murder of Fernando Alcibiades Villavicencio Valencia, the former presidential candidate of Ecuador in the 2023 elections. *Id.* Ecuadorian National Police have identified Petitioner as a subject of interest and known associate of the "Metastasis" criminal organization, which includes several corrupt former Ecuadorian government officials. *See* Exh. A.

On August 25, 2025, Petitioner was scheduled for a custody redetermination hearing before the immigration court. *See* Galo Decl., ¶ 14. On the same day, the Court took no action on the custody redetermination. *See* Galo Decl., ¶ 15; Exh. F, Order taking No Action on Bond, dated August 25, 2025.

On September 11, 2025, Petitioner was scheduled for a custody redetermination hearing and a master hearing before the immigration court. *See* Galo Decl., ¶ 16. The custody redetermination hearing was rescheduled to September 16, 2025, due to Petitioner's counsel's late filing of documents in support of Petitioner's Motion for Bond. *See* Galo Decl., ¶ 17. On September 16, 2025, the immigration judge denied Petitioner's request for a custody redetermination, finding Petitioner to be a danger to the community and a flight risk. *See* Galo Decl., ¶ 18; Exh. G, Order Denying Bond, dated September 16, 2025. On the same date, the immigration judge granted Petitioner's counsel *ore tenus* Motion for Continuance of the master hearing for additional time to prepare. *See* Galo Decl., ¶ 20. The master hearing is scheduled for September 30, 2025. *Id.* at ¶ 21. To date, Petitioner has not appealed the immigration judge's denial of bond. *Id.* at ¶ 19.

II. ARGUMENT

Temporary restraining orders and preliminary injunctions are "extraordinary and drastic" remedies. *See Schiavo ex rel. Schindler v. Schiavo,* 403 F.3d 1223, 1231 (*quoting United States v. Jefferson* County, 720 F.2d 1511, 1519 (11th Cir. 1983)); *see also Siegel v. Lepore,* 234 F.3d 1163, 1176 (11th Cir. 2000). A party seeking a temporary restraining order or preliminary injunction must establish four elements: (1) a substantial likelihood of success on the merits; (2) irreparable injury that will be suffered unless an injunction issues; (3) that the threatened injury to the movant outweighs the threatened harm an injunction may cause the opponent and (4) that an injunction will not be adverse to the public interest. *Siegel,* 234 F.3d at 1176. A court should not grant the relief unless the movant clearly establishes his burden of persuasion as to all four elements. *Id.*

While Petitioner styles his Motion as a request for a temporary restraining order, he asks the Court to "order [] Respondents to detain him as an asylum seeker held with non-criminal asylum seekers not as a criminal held with criminals." *See* Motion at 4. Petitioner further requests that the Court "clarify that Respondents should not place him in solo confinement or transfer him out of its jurisdiction." *Id.* Finally, in the alternative, Petitioner's seeks "release from DHS custody." *Id.* Accordingly, the relief Plaintiff seeks is a mandatory injunction. Therefore, Plaintiff's burden is even higher.

A typical preliminary injunction is prohibitive in nature and seeks simply to maintain the *status quo* pending a resolution of the merits of the case. *See Mercedes–Benz U.S. Int'l, Inc. v. Cobasys, LLC,* 605 F.Supp.2d 1189, 1196 (N.D. Ala. 2009). When a preliminary injunction is sought to force another party to act, rather than simply to maintain the *status quo*, it becomes a "mandatory or affirmative injunction" and the burden on the moving party increases. *Exhibitors*

Poster Exch. v. Nat'l Screen Serv. Corp., 441 F.2d 560, 561 (5th Cir.1971). A mandatory injunction "should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party." *Id; see also Martinez v. Mathews,* 544 F.2d 1233, 1243 (5th Cir.1976) ("Mandatory preliminary relief, which goes well beyond simply maintaining the *status quo*, is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party.). Accordingly, a plaintiff seeking such relief bears a heightened burden of demonstrating entitlement to preliminary injunctive relief. *See Verizon Wireless Pers. Commc'n LP v. City of Jacksonville, Fla.,* 670 F.Supp.2d 1330, 1346 (M.D.Fla.2009) (quotation and citation omitted); *Mercedes–Benz,* 605 F.Supp.2d at 1196; *OM Group, Inc. v. Mooney,* 2006 WL 68791, at *8–9 (M.D. Fla. Jan. 11, 2006).

Plaintiff cannot meet his burden of showing entitlement to a temporary restraining order. Nor can he meet his even higher burden of showing a clear entitlement under the facts and the law to mandatory injunctive relief.

A. <u>Petitioner Has Failed To Establish Substantial Likelihood Of Success On The Merits.</u>

1. *The Court Lacks Subject Matter Jurisdiction*

The Court should deny the Motion because it lacks subject matter jurisdiction. Subject matter jurisdiction must be established before a case can proceed on the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93–95 (1998). This is because "[f]ederal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. of Am.*, 511 U.S. 375, 377 (1994) (alteration added). "[S]ubject matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 630 (2002). "If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). The burden to establish the existence of federal subject matter jurisdiction rests with the party bringing the claim. *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1248 n.2 (11th Cir. 2004).

Petitioner is detained pursuant to Section 236(a) of the INA, codified at 8 U.S.C. § 1226, which provides, in pertinent part:

> (a) Arrest, Detention and Release
>
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General---
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> (1) may continue to detain the arrested alien; and
> (2) may release the alien on---
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
> (B) conditional parole; but
> (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

8 U.S.C. § 1226(a). Detention under § 1226(a) is a discretionary exercise by the Attorney General and her delegees.[2] Accordingly, both the underlying detention and the relief Plaintiff seeks is within the discretion of the Executive Branch and therefore the Court is divested of subject matter jurisdiction.

a. 8 U.S.C. § 1252(a)(2)(B)(ii)

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2 Although the statute and regulations refer to the "Attorney General," these references should, in light of the Homeland Security Act of 2002, be read as references to the Secretary of Homeland Security. *See* Homeland Security Act § 471, 6 U.S.C. § 291 (abolishing the former Immigration and Naturalization Service); *id.* § 441, 6 U.S.C. § 251 (transferring immigration enforcement functions from the Department of Justice to the Department of Homeland Security); 8 U.S.C. § 1103(a)(1) ("The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens . . . ").

8 U.S.C. § 1252 explicitly precludes jurisdiction in a district court as follows:

> (B) Denials of discretionary relief
>
> 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, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—
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> * * *
>
> (ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

8 U.S.C. § 1252(a)(2)(B)(ii) (emphasis added); *see also, e.g., Alonso-Escobar v. USCIS Field Office Dir., Miami, Fla.*, 462 F. App'x 933, 935 (11th Cir. 2012) ("[C]ourts lack jurisdiction to review discretionary decisions or actions of the Attorney General or the Secretary of DHS."). Relatedly, 8 U.S.C. § 1231(g)(1) falls within the subchapter and states that the "Attorney General shall arrange for appropriate places of detention for aliens detained pending removal **or a decision on removal**." 8 U.S.C. § 1231(g)(1) (emphasis added). *See Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) ("§ 1252(a)(2)(B)(ii) provides that no court has jurisdiction to review any decision or action the Attorney General has discretion to make 'under this subchapter' except for 'the granting of relief under section 1158(a).' 'This subchapter,' which is subchapter II of Chapter 12 of Title 8, covers §§ 1151-1378, including § 1231.").

Here, Petitioner essentially asks the Court to serve as a Warden of Krome, dictating where Petitioner can be held, restricting Respondents from transferring Petitioner to another facility, and challenging Petitioner's security classification, all functions reserved to the discretion of the Executive Branch. "[T]he place of detention is left to the discretion of the Attorney General." *Kapiamba v. Gonzalez*, No. 07-CV-335, 2007 WL 3346747, 2007 U.S. Dist. LEXIS 82767, *2-3

(W.D. Mich., Nov. 7, 2008) (citing, *Sinclair v. Attorney General of the United States*, 198 Fed. Appx. 218, 222 n. 3 (3rd Cir. 2006) (listing cases). *See also, Marogi v. Jenifer*, 126 F. Supp. 2d 1056, 1066 (E.D. Mich. 2000) ("Congress has placed the responsibility for determining where aliens are to be detained within the sound discretion of the Attorney General"). Accordingly, "the determination of where to detain an alien to facilitate removal falls squarely within the discretion of the Attorney General." *Barrios v. Ripa*, 2025 WL 2280485, at *5 (S.D. Fla. Aug. 8, 2025).

Further, challenges to security classifications, which are discretionary, are both prohibited by 8 U.S.C. 1252(a)(2)(B)(ii) and fall outside the scope of habeas generally. *See Gudry v. Warden FCI Talladega,* 2020 WL 1237961 (N.D. Ala. 2020). Petitioner has no constitutional right to any specific custody classification. *Rivera v. Martinez*, 2008 WL 4200133, at *5 (M.D. Pa. Sept. 9, 2008) (stating "it is well settled that the BOP classification procedure is within the discretion of the ... BOP") (citing *Sake v. Sherman*, 2007 WL 2254529, *5 (W.D. Pa. Aug. 6, 2007)); *see also Perez v. Fed. Bureau of Prisons*, 229 F. App'x 55, 58 (3rd Cir. 2007) (recognizing that "changes in security classifications . . . do not implicant a liberty interest protected by the Due Process Clause"). Rather, "prison officials are accorded wide ranging deference in the adoption and execution of policies ... needed ... to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). "Deciding how to classify prisoners and choosing the institution in which to place them are part and parcel of the inherently policy-laden endeavor of maintaining order and preserving security in our nation's prisons." *Cohen v. United States*, 151 F.3d 1338, 1343 (11th Cir. 1998).

b. 8 U.S.C. § 1252(g)

8 U.S.C. § 1252(g), also divests the Court of subject matter jurisdiction over the relief Petitioner seeks regarding where he may be detained and his classification. Title 8, Section 1252 provides as follows:

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

8 U.S.C. § 1252(g) (emphasis added). In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), the Supreme Court observed 1252(g) applies to three discrete actions that the Attorney General may take: "her decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Id.* at 482 (emphasis in original). "[T]he Eleventh Circuit has held that, regardless of how an alien characterizes his or her claims, district courts lack jurisdiction over challenges to the commencement of removal proceedings." *De Vera v. U.S. Immigration and Customs Enforcement*, 2018 WL 1441344, at *2 (S.D. Fla. Mar. 21, 2018) (*citing Alvarez v. U.S. Immigration and Customs Enforcement*, 818 F.3d 1194, 1203 (11th Cir. 2016) (holding that 8 U.S.C. § 1252(g) bars courts from questioning ICE's "discretionary decision to commence removal …"); *Mata v. Sec'y of Homeland Sec.*, 426 Fed. Appx. 698, 700 (11th Cir. 2011) (rejecting plaintiffs "attempts to evade the bars in 8 U.S.C. § 1252 by characterizing his claim as a challenge not to his removal but rather the Immigration and Naturalization Services' rescission decision"). Further, the Eleventh Circuit has recognized that § 1252(g) forecloses "the methods ICE used to detain [a Petitioner] prior to his removal hearing." *Alvarez*, 818 F.3d at 1203-04; *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013) ("[s]ecuring an alien while awaiting a removal

determination constitutes an action taken to commence proceedings"). Accordingly, the Court lacks subject matter jurisdiction.

c. 8 U.S.C. § 1226(e)

Finally, to the extent Petitioner seeks to challenge the denial of bond, the Court lacks subject matter jurisdiction. This Court is without jurisdiction to review bond and parole decisions by operation of 8 U.S.C. § 1226(e). This is not an open question: "As we have previously explained, § 1226(e) precludes an alien from 'challeng[ing] a "discretionary judgment" by the Attorney General or a "decision" that the Attorney General has made regarding his detention or release.'" *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003)). Indeed, there was good reason to understand that such review was prohibited in the Eleventh Circuit even before the Supreme Court definitively decided the matter in *Rodriguez*. *See, e.g.*, *United States v. Velasquez*, 524 F.3d 1248, 1252 (11th Cir. 2008) (explaining that the district court "lacked authority" to review and overturn "the IJ's decision to release Velasquez on bond pending his immigration proceedings"). Petitioner may appeal the immigration judge's determination to the Board of Immigration Appeals ("BIA"), the appellate administrative body with jurisdiction over the matter. *See* 8 C.F.R. § 1236.1(d)(3)(i); *see also* 8 C.F.R. § 1003.38. Petitioner has not yet done so.[3]

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[3] Fundamentally, much of the relief Petitioner seeks in the Motion is also precluded as outside the scope of a habeas petition. Caselaw makes explicitly clear that "the Suspension Clause is not implicated where [a] [p]etitioner is seeking injunctive relief." *Bumu v. Barr*, 2020 U.S. Dist. LEXIS 205380, *6 (W.D.N.Y. Nov. 3, 2020). The Supreme Court reaffirmed this principle in *Dep't. of Homeland Sec. v. Thuraissigiam* when it held that the Suspension Clause does not apply when a non-core habeas petition seeks relief beyond "simple release." 140 S. Ct. 1959 (2020). In *Thuraissigiam*, the respondent was seeking relief beyond the simply release contemplated by the common-law habeas writ. *Id.* Respondent in that case was seeking vacatur of his removal order and an order directing the agency to provide him with a new opportunity to apply for asylum and other relief from removal. *Id.* The Supreme Court held "habeas is at its core a remedy for unlawful executive detention" and that what this individual wanted was not

2. *Petitioner Failed To Exhaust Administrative Remedies For His Detainee Classification.*

Additionally, Petitioner has not exhausted administrative remedies for any objections he has to his classification level. In the Motion, Petitioner maintains that he is being held with "criminals." Motion at 2, ¶ 6. Similarly, in the Petition, he claims that he is being held under "medium security as a criminal" instead of with non-criminals. (ECF No. 1 at 3, ¶ 18). However, pursuant to the Performance Based National Detention Standards ("PBNS"), which govern Krome, there is a system by which detainees may appeal their classification level. *See* PBNS 2011, 2.2 Custody Classification System, Section V, I; *see also* PBNS 2011, 6.2 Grievance System.[4] Specifically, detainees must appeal their classification levels through a written detainee request form or by filing formal grievances. *Id.*; *see also* Galo Decl., ¶ 22. Petitioner has not appealed his classification level. *See* Galo Decl., ¶ 23. Accordingly, even if the Court had subject matter jurisdiction, it should not grant relief due to Petitioner's failure to exhaust administrative remedies.

3. *Petitioner's Detention Is Lawful.*

Should the Court find that it has subject matter jurisdiction, which it does not, the Petition should be denied because Petitioner is legally detained pursuant to 8 U.S.C. § 1226(a). Petitioner does not contend that he is illegally held pursuant to any immigration statute such that he should be entitled to release. Rather, Petitioner seems to argue that because he has no criminal record and a pending asylum application, he is entitled to release. *See* Motion at 2, ¶¶8-9. Petitioner is incorrect.

"simple release" but an opportunity to remain lawfully in the United States. *Id.* (quoting *Munaf v. Geren*, 553 U.S. 674 (2008)). The court went on to note that "[c]laims so far outside the 'core' of habeas may not be pursued through habeas." *Id.* (internal citations omitted).

4 The PBNDS 2011 is publicly available at: https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf (last visited September 17, 2025).

As set forth above, "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). There is no prerequisite of criminal convictions that must be satisfied in order for an alien to be detained under § 1226(a) while removal proceedings are ongoing. In fact, another provision, § 1226(c), addresses criminal aliens. Further, a pending asylum application does not confer an immigration benefit or otherwise bar Respondents from detaining Petitioner during removal proceedings. Form I-797C acknowledging receipt of Petitioner's asylum application, which is attached to the Habeas Petition, expressly states that it "DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT" (ECF No. 1-4). Indeed, Petitioner's asylum application will be adjudicated in the removal proceedings.

Petitioner's detention under § 1226(a) has an end point, specifically the conclusion of removal proceedings. The Supreme Court emphasized in *Demore v. Kim*, 538 U.S. 510 (2003), "detention pending a determination of removability" has a "definite termination point": entry of a final order of removal. *Id.* at 529. Relatedly, there is no constitutional infirmity here. The detention has not become prolonged. Petitioner was detained for one month when the Petition was filed. *See, e.g. O.D. v. Warden, Stewart Detention Ctr.*, 2021 WL 5413968 at *4-5 (M.D. Ga. Jan. 14, 2021), *adopted by*, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to petitioner who had been detained for nineteen months); *Sigal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, No., 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (three years).

To be sure, Petitioner is detained to assure his attendance at removal proceedings and if necessary, his removal from the United States. "For an alien detained pursuant to § 1226(a), both ICE and the immigration judge may grant bond in the exercise of discretion. The immigration judge's decision can be reviewed by the BIA." *See* 8 C.F.R. §§ 236.1(c)(8), 1003.19, 1236.1(c)(8). An alien who poses a danger to persons or property, or who poses a flight risk will not be released during the pendency of removal proceedings. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). The burden is on the alien to show that he neither poses a danger to people or property, nor poses a flight risk. *Id.* Petitioner did not meet that burden before the immigration judge at his bond hearing and as discussed above, he has not appealed that determination to the BIA.

Accordingly, Petitioner has not identified a legal infirmity to his detention. As a result, Petitioner has not met his burden to establish a substantial likelihood of success on the merits. His Motion should be denied on this basis alone.

B. Petitioner Has Not Established Irreparable Harm.

Petitioner also fails to demonstrate irreparable harm. Preliminary injunctive relief requires showing "imminent" irreparable harm. *Wreal, LLC v. Amazon.com*, 840 F.3d 1244, 1248 (11th Cir. 2016) (quotations and citations omitted). "Indeed, the very idea of a preliminary injunction is premised on the need for speedy and urgent action to protect a plaintiff's rights before a case can be resolved on the merits. *Id.* (citations omitted). The Eleventh Circuit has recognized that "[a] delay in seeking preliminary injunctive relief of even only a few months -- though not necessarily fatal – militates against a finding of irreparable harm." *Id.* (citations omitted); *see also Pals Group, Inc. v. Quiskeya Trading Corp.*, 2017 WL 532299, at *6 (S.D. Fla. Feb. 9, 2017) ("Courts (both in and outside the Eleventh Circuit) have held that unexplained delays of a few months negate any claim of irreparable harm on a preliminary injunction motion"). "Delay, or too much of it indicates that a suit or request for injunctive relief is more about gaining an advantage (either a commercial or litigation advantage) than protecting a party from irreparable harm." *Vialle Group, B.V. v. Green Wing Group, Inc.*, 2016 WL 8678888, at *2 (S.D. Fla. Oct. 26, 2016) (citation omitted).

Here, Petitioner was arrested by ICE on August 7, 2025. However, the Petition was not filed until over one month later on September 8, 2025. The Petition was not characterized as an emergency and only after the Court issued the Order to Show Cause did Petitioner file the instant Motion claiming that he is in "grave" and "immediate danger" due to his confinement. In fact, in addition to not being characterized as an emergency petition, the Petition does not allege that Petitioner is in immediate danger, as now asserted in the Motion pending before the Court.

Further, while Petitioner identifies "murder" as an irreparable harm, there are no allegations in the Petition of threats to Petitioner or any other non-conclusory information to support that Petitioner is in grave and imminent danger of being murdered, as claimed in the Motion. For the first time in the Motion, Petitioner asserts that he is sleeping three beds over from an Ecuadorian gang member and drug dealer, but he has not alleged that he has been threatened by this individual or had any interactions with him at all. In short, Plaintiff's claims of irreparable harm arising from violence appear to be speculative.

Petitioner's additional claim that his detention impedes his ability to prepare his asylum case and that he has emotional distress do not rise to the level of irreparable harm. Notably, Plaintiff filed his asylum application nearly four years ago.

Thus, in addition to the timing of the filings, their substance undercuts Petitioner's claim of irreparable harm.

C. <u>The Public Interest Is Not Served By Granting Injunctive Relief And The Balance Of Equities Tip In Respondents' Favor</u>

Last, the Court should not enjoin Respondents because the public interest and balancing of the equities weigh against granting injunctive relief. A TRO would interfere with Respondents' statutory ability to enforce the immigration laws, which is in the public interest. *See, e.g., Garcia v. Martin*, 379 F. Supp. 3d 1301, 1308 (S.D. Fla. Nov. 18, 2018) (denying a preliminary injunction requesting a stay of removal because an execution of a removal order "is commensurate with the public's interest in enforcing federal law."). "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 [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009) (alterations in original); *see Landon v. Plasencia*, 459 U.S. 21, 34 (1982) ("The Government's interest in efficient administration of the immigration laws . . . is weighty."). The Government's interests in maintaining the existing removal procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

III. CONCLUSION

For the reasons set forth herein, the Court should deny Petitioner's Motion for Temporary Restraining Order.

Respectfully submitted,

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