IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

W.J.C.C.[1] Petitioner-Plaintiff, v. DONALD J. TRUMP, *et al.*, Respondents-Defendants.	No. 3:25-cv-00153-SLH

RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner filed an emergency petition for a writ of habeas corpus and an emergency application for a temporary restraining order seeking to enjoin Respondents from exercising authority under the Alien Enemies Act ("AEA"). ECF 1 at 1-4; *see also* ECF 2, 3. The Court granted Petitioner a temporary restraining order, ECF 4, and directed Respondents to respond to the emergency application for a TRO. ECF 7. As explained below, Petitioner's request for a temporary restraining order is meritless and the Court should lift the order granting it.

As a threshold matter, Petitioner is not entitled to relief: he cannot establish standing because: (1) he has not been designated under the AEA; (2) he does not face an imminent threat of removal without notice given the AEA notice procedures; and (3) he does not face an imminent threat of transfer from the Western District of Pennsylvania to another detention facility. Indeed, the fulcrum of his action—closure of his commissary account at his detention facility—is itself faulty. He perceives that closure as the trigger for his transfer out of that facility, his designation under the AEA, and his eventual unlawful removal from the United States. But, in fact, the

[1] Petitioner requested and was granted permission to proceed under a pseudonym. ECF 5, 6, 8.

commissary went offline for the entire facility, rendering Petitioner's series of events not simply unlikely, but impossible.

Apart from failed standing, Petitioner cannot demonstrate that he is substantially likely to succeed on the merits of his claims.

The Court lacks jurisdiction over the President's Proclamation. To enable designated enemy aliens to be removed under the AEA, the President found that [redacted] members are involved in, threatening, or attempting an "invasion" or "predatory incursion," and that [redacted] has "infiltrated," and "acts at the direction" of the Venezuelan government. This Court has agreed, in part, ruling that the Proclamation complies with the AEA, because the Proclamation describes a "Predatory Incursion [redacted]" and "Meets the Definitions of "Against the Territory of the United States" and "by any Foreign Nation or Government." *A.S.R. v. Trump*, ---F.Supp.3d----, 2025 WL 1378784, at *17-18 (May 13, 2025) (Haines, J.).[2]

The Court lacks jurisdiction over Petitioner's transfer, so there is no way to succeed on those claims. The Immigration and Nationality Act ("INA") strips this Court of jurisdiction to enjoin transfers of aliens being detained under Title 8 out of this District. On the instant facts, moreover, any hold on transfer of Petitioner is unwarranted because a transfer would not result in cancellation of his Internet-based June 30, 2025 individual hearing on the merits of his case (although a transfer could result in a change of venue and a rescheduled date for the hearing). *Compare A.S.R.*, 2025 WL 1378784, at *8 & n.4. Nor has the INA implicitly repealed the AEA, and the INA and AEA are not in conflict. *See id.* at *21. Likewise, the AEA does not interfere with the Foreign Affairs Reform and Restructuring Act of 1998.

[2] Respondents respectfully continue to press arguments made previously to this Court for purposes of preservation for any further review.

Petitioner fails to show he is substantially likely to succeed on the merits of any of his claims. His averment of a due process violation or entitlement to relief under 28 U.S.C. § 2241 is meritless. Petitioner is subject to mandatory detention, but has been in custody since February 9, 2025–or barely 3.5 months. In that period, he has been placed in proceedings, has applied for relief, and has an individual merits hearing scheduled for June 30, 2025. He is receiving all process to which he is due. And, he will continue to receive all process to which he is due. *See A.S.R.*, 2025 WL 1378784, at *20 (holding that twenty-one (21) days' notice and an opportunity to be heard is a sufficient period of time to actually allow [A.S.R.] to seek habeas relief in the proper venue before such removal [under the AEA and the Proclamation] occurs.") (cleaned up); *see also A.A.R.P. v. Trump*, No.24-A1007, 24-1177, 2025 WL 1417281, at *2 (U.S. May 16, 2025).

Petitioner also fails to satisfy the remaining requirements for preliminary injunctive relief. He cannot show irreparable harm because burdens attendant to removal are insufficient standing alone. Further, Petitioner has not shown that the balance of the equities and public interest lie with them. Individuals identified as members of a Foreign Terrorist Organization cannot credibly claim injury from the President's decision to expel them from the United States. Meanwhile, the President—and public—have an overwhelming interest in the security of the United States and in ensuring that the Executive's significant outlay of diplomatic capital for this mission is not wasted.

Thus, for the reasons set forth more fully below, Petitioner's motion should be denied.

BACKGROUND

I. [redacted] and Invocation of the AEA through Presidential Proclamation

[redacted] is a transnational criminal organization that originated in Venezuela and has "conducted kidnappings, extorted businesses, bribed public officials, and authorized its members to attack and kill U.S. law enforcement." Office of the Spokesperson, Dep't of State, Designation of International Cartels (Feb. 20, 2025). The President has found that [redacted] operates

"both within and outside the United States" and that its "extraordinarily violent" campaign of terror presents "an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." Exec. Order No. 14,157, 90 Fed. Reg. 8439, 8439 (Jan. 29, 2025). The President declared a national emergency to respond to that threat. *Id.* On February 20, 2025, the Secretary of State designated [redacted]. This designation is authorized when a foreign organization engages in "terrorist activity" or "retains the capability and intent" to do so, thereby threatening "the national security of the United States." 8 U.S.C. §§ 1189(a)(1), (d)(4).

On March 14, 2025, the President signed a proclamation, invoking his authority under the Alien Enemies Act, 50 U.S.C. §§ 21-24, against [redacted] members. *See* [redacted] Originally enacted in 1798, the AEA grants the Executive broad power to remove enemy aliens. *See* 50 U.S.C. § 21. The President found that [redacted] which "commits brutal crimes" including murder and kidnapping, is "conducting irregular warfare and undertaking hostile actions against the United States." *See* 90 Fed. Reg. at 13,033. The President found that [redacted] has "engaged in and continues to engage in mass illegal migration" to further [redacted] objectives: "harming United States citizens, undermining public safety, and supporting the Maduro regime's goal of destabilizing democratic nations in the Americas, including the United States." *Id.*

Based on these and other findings set forth more fully in the Proclamation, the President proclaimed that "all Venezuelan citizens 14 years of age or older who are members of [redacted] are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies" under 50 U.S.C. § 21. *Id.* at 13,034. Further, the President found "all such members of [redacted] . . chargeable with actual hostility against the United States" and "a danger to the public peace or

safety of the United States." *Id.* All such [redacted] members "are subject to immediate apprehension, detention, and removal." *Id.*

To that end, the President directed the Attorney General and the Secretary of Homeland Security to, "*consistent with applicable law*, apprehend, restrain, secure, and remove every Alien Enemy described" above. *Id.* (emphasis added). Any such [redacted] member found within the United States is "subject to summary apprehension" under the [redacted] Alien enemies so apprehended may be detained until their removal to "any such location as may be directed" by the enforcing officers. *Id.* [redacted] members remain deportable under other authorities, including Title 8, as members of a foreign terrorist organization or otherwise. *See id.* at 13,034 (permitting Secretary of Homeland Security "discretion to apprehend and remove any Alien Enemy under any separate authority"); *see also* 8 U.S.C. §§ 1182(b)(3)(B), 1227(a)(4)(B).

II. The Notice Procedures under the AEA

In accordance with this Court's decision in *A.S.R.*, 2025 WL 1378784, at *20, Respondents will provide "twenty-one (21) days' notice and an opportunity to be heard to allow Petitioner to seek habeas relief in the proper venue before [any] removal under the AEA and the Proclamation occurs." *See also Trump v. J.G.G.*, 604 U.S. --, 145 S. Ct. 1003 (2025); *A.A.R.P.*, 2025 WL 1417281. Individual notice will be provided that the detainee is subject to be removed as an alien enemy. *A.S.R.*, 2025 WL 1378784, at *20. The Notice will be read and explained to each alien in a language that alien understands. *Id.* Because Petitioner has counsel, the foregoing notice will be provided to counsel as well. *See id.*

III. Petitioner's History

Petitioner is a native and citizen of Venezuela who is currently detained in the custody of Immigration and Customs Enforcement ("ICE"). Ex.1 at 1 (Form I-213).[3] As will be described in more detail below, Petitioner was previously released from ICE custody but was subsequently re-detained and is now subject to mandatory detention on security-related grounds. Ex.I at 1 (5/14/25 order) (citing 8 C.F.R. § 1003.19(h)(1)(i)(C).

On a date and at a location unknown, and not through a designated port of entry, Petitioner entered the United States without inspection or parole by an immigration officer in violation of the 8 U.S.C. § 1182(a)(6)(A)(i). Ex.1 at 3.

On [redacted] 2024, a state court convicted Petitioner of [redacted] in violation of [redacted] a misdemeanor. *Id.* He was sentenced to probation. *Id.*

On May 20, 2024, ICE arrested Petitioner. *Id.* The next day, ICE commenced removal proceedings under 8 U.S.C. § 1229a by issuing Petitioner a Notice to Appear ("NTA") charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States without having been admitted or paroled. Ex.A at 1-2 (NTA); Ex.1 at 3.

On August 27, 2024, following Petitioner's request for a custody redetermination pursuant to 8 C.F.R. § 1236, an immigration judge granted Petitioner's release on $10,000 bond. Ex.B (8/27/24 order). On September 6, 2024, Petitioner paid bond of $10,000 and was released. Ex.C (9/23/24 Form I-830E).

On [redacted] 2025, a state court convicted Petitioner of [redacted] in violation of [redacted] Ex.1 at 3. Four days later,

[3] This document is attached as Exhibit 1 to the Waxman Declaration submitted by Petitioner at ECF 1 Document 1-2 and at ECF3 Document 3-1. Exhibits filed by Respondents are identified alphabetically, A through J.

on [redacted] 2025, that same court convicted Petitioner of [redacted] because he was previously convicted for [redacted] 2024. *Id.* As a result, he was sentenced to two days of incarceration. *Id.*

On February 7, 2025, ICE encountered Petitioner at a county detention center during jail screenings, and lodged a detainer against him. *Id.* at 2. On February 9, 2025, the detention center released Petitioner into ICE custody. *Id.* at 2-3. During his initial interview with ICE, Petitioner claimed no fear of returning to Venezuela. *Id.* at 4. Petitioner was suspected of membership in [redacted] due to his associates and having gang symbols on his vehicle, property and clothing. *Id.*

Petitioner is detained in ICE custody at Moshannon Valley Processing Center pending completion of his removal proceedings pursuant to 8 U.S.C. § 1229a. Ex.D (2/10/25 Form I-830). On February 18, 2025 and at the request of ICE, venue for Petitioner's immigration proceedings was transferred to Elizabeth Immigration Court. Ex.E (DHS motion); Ex.F (2/18/25 order).

Petitioner filed for relief from removal on February 14, 2025. On March 6, 2025, the Executive Office for Immigration Review issued a notice of hearing scheduling Petitioner for an individual hearing on the merits of his applications for relief on June 30, 2025. Ex.G (notice).

While awaiting his individual hearing, Petitioner requested another custody redetermination hearing pursuant to 8 C.F.R. § 1236, but later withdrew the request on April 22, 2025. Ex.H (4/22/25 order). Petitioner again requested a custody redetermination pursuant to 8 C.F.R. § 1236, but it was denied on May 14, 2025 because Petitioner is subject to mandatory detention on security-related grounds. Ex.I.

After review of the facts of Petitioner's case, ICE/ERO determined his membership in [redacted] Doc.1 at 4; Ex.A at 1 (noting removability based on § 212(a)(6)(A)(i) of INA). Petitioner has not been processed under the AEA. *See* Doc.1 at 4; Ex.A at 1.

IV. Petitioner's Suit

On May 22, 2025, Petitioner filed a petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief seeking to enjoin Respondents from exercising authority under the AEA. ECF 1 at 1-4. Petitioner set forth four causes of action:

1) the AEA is ultra vires, ECF 1 at 8;

2) Respondent's implementation of the AEA violates the Foreign Affairs Reform and Restructuring Act of 1998, *id.* at 8-9;

3) application of the AEA to Petitioner violates the Fifth Amendment, *id.* at 9; and

4) removal of Petitioner under the AEA violates 28 U.S.C. § 2241, *id.*

As relief, Petitioner requests that the Court:

(1) temporarily and permanently enjoin his removal from the United States pursuant to the AEA;

(2) temporarily and permanently enjoin Petitioner's transfer from the Western District of Pennsylvania.

(3) declare the President's Proclamation on the AEA unlawful;

(4) grant a writ of *habeas corpus*;

(5) declare that Respondents' implementation of AEA removals pursuant to the Proclamation violates Petitioner's due process rights;

(6) enjoin respondents from removing Petitioner based on the Proclamation without providing to Petitioner and his counsel at least 21-day notice of and a meaningful opportunity to respond to any designation as an alien enemy under the Proclamation prior to the removal date; and

(7) grant such further relief as the Court deems just, equitable, and appropriate.

ECF 1 at 9-10; *see also* ECF 3. The Court granted Petitioner a TRO, ECF 4, and directed Respondents to respond to the emergency request for a TRO. ECF 7. As explained below, Petitioner's request for a temporary restraining order is meritless and the Court should lift the order granting it.

LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). "Because a preliminary injunction is an extraordinary and drastic remedy, its grant is the exception rather than the rule, and [the movant] must clearly carry the burden of persuasion." *United States v. Lambert*, 695 F.2d 536, 539 (11th Cir. 1983) (internal quotations and citation omitted). The movant must establish the following four requisites: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury absent an injunction; (3) the threatened injury to the moving party outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the injunction would not be adverse to the public interest. *Id.* at 1039. The latter two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). "Failure to show any of the four factors is fatal[.]" *Am. Civ. Liberties Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009) (citations omitted).

ARGUMENT

I. The TRO Should Be Lifted Because Petitioner lacks standing as to his claims.

At the outset, the Court need not reach the merits of Petitioner's claims concerning the AEA, in which he challenges primarily the invocation of the AEA by the President's Proclamation and the sufficiency of the notice procedures. ECF 3 at 3-5 at 7. This is because Petitioner cannot establish standing as to any of his claims since he has not even been designated under the AEA. Petitioner's lack of standing is fatal to his Motion for TRO, as he cannot meet his burden of proving two elements of a TRO: substantial likelihood of success on the merits and a substantial threat of irreparable harm.

"No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or

controversies." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976) (citation omitted). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). In order for there to be a justiciable case or controversy, Plaintiff "bears the burden of establishing standing as of the time he brought this lawsuit and maintaining it thereafter." *Carney v. Adams*, 592 U.S. 53, 59 (2020) (citations omitted). "At the preliminary injunction stage, then, the plaintiff must make a clear showing that [he] is likely to establish each element of standing." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (citation omitted). To establish standing, a plaintiff must show "an injury [that is] concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (internal quotations and citation omitted).

Here, Petitioner has not shown that he is under an "actual and imminent" threat of suffering a "concrete and particularized" injury-in-fact. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). True, Petitioner filed the Petition because he believes the Government has accused him of affiliation with [redacted] and due to the Government's "recent actions against him, Petitioner is at grave risk of being classified as an alien enemy under the AEA, transferred out of the district, and summarily deported under the Proclamation to El Salvador or to a third country." ECF 1 at 5 ¶15. *See also id.* at 7 ¶ 31 (stating ICE "accused Petitioner of membership in or affiliation with [redacted] in Form 1-213"). The recent action against him is apparently the following: "On May 21, 2025, Petitioner received notice that he was being transferred from the Moshannon Valley Processing Center to a different detention facility in Louisiana. Waxman decl. at ¶ 13."[4] ECF 1 at 8 ¶32. Based

[4] The Waxman declaration does not identify the source of Petitioner's stated belief that closure of his commissary account is the trigger for transfer to a Louisiana detention center, nor is there any foundation for the asserting that closure of the commissary account is "likely a precursor to W.J.C.C.'s transfer." Waxman Dec ¶¶13-14.

on ICE's "accusation in the I-213[,]" Petitioner avers he "is at imminent risk of removal without a hearing or meaningful review...." ECF 1 at 8 ¶33.

This is insufficient to establish any imminent risk, and therefore he lacks standing. Petitioner, by omission, necessarily agrees that he has not been given any indication that he is subject to the AEA or that his removal is actually imminent pursuant to the AEA. Petitioner avers that he received "notice" of a transfer, ECF 1 at 8 ¶32, but that is based on termination of his commissary account. He believes that this closure necessarily equals imminent transfer and then removal for which he may not receive reasonable notice to facilitate meaningful review prior to his removal. *Id.* ¶83. In truth, the commissary account system MVPC has been offline since 6:30 a.m. on May 21, 2025. Ex.J ¶1 (Blair Dec.). And, there is no indication that Petitioner was scheduled for transfer from MVPC in the immediate future. *Id.* ¶2.

As the Supreme Court has "said many times before and reiterate[d]: Allegations of possible future injury do not satisfy the requirements of Art[icle] III." *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (citations omitted). Given that Petitioner admits he is not presently subject to the AEA but instead is suspected of membership in  in his Form I-213, ECF 1 at 5 ¶15, his purported injury can be nothing but a "possible future injury," *Whitmore*, 495 U.S. at 158. Rather, in an attempt to create a redressable injury, he appears to rely on a chain of events as follows: (1) he is "suspected" but not processed formally or otherwise under the AEA for removal; (2) his commissary account was closed; (3) he has heard from unnamed sources that closure of his commissary account unequivocally equates to a transfer to a facility in Louisiana; (4) he believes these events mean he could be designated for removal under the AEA; (5) if he is so designated, he could be afforded insufficient notice of his designation; (6) if the notice is insufficient, he may have inadequate time to contest his designation; and (7) if he is unable to contest his designation, it is possible he could be wrongfully removed. But this "theory of standing, which relies on a highly

attenuated chain of possibilities, does not satisfy the requirement that threatened injury must be certainly impending." *Clapper*, 568 U.S. at 410 (citation omitted).

At most, Petitioner could attempt to liken his potential future designation under the AEA to pre-enforcement challenges to criminal statutes. In those cases, the Supreme Court has looked to two factors in evaluating standing: (1) whether the plaintiff has "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute," and (2) whether "there exists a credible threat of prosecution[.]" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014); *see also Dream Defs. v. Gov. of the State of Fla.*, 57 F.4th 879, 887 (11th Cir. 2023). Here, Petitioner cannot and has not satisfied either factor. Indeed, Petitioner's averments of future injury are infirm on their face: he asks the Court to engage in a highly speculative chain of inferences based on the trigger of closure of his commissary account, shown by Respondents to instead to be a facility-wide shutdown, not one directed to Petitioner. Ex.J ¶1. Accordingly, at present, Petitioner cannot establish that his conduct falls within the scope of the challenged statute nor establish a credible threat of prosecution because ICE/ERO—as the responsible entity—has concluded the exact opposite. This finding plainly separates Petitioner's circumstances from those where courts have found that plaintiffs established standing under this test. *See, e.g., Driehaus*, 573 U.S. at 164 (finding standing for pre-enforcement challenge where prosecuting agency found probable cause that plaintiff had violated statute).

To the extent Petitioner alleges or subjectively believes ICE/ERO could reverse course and designate him under the AEA, this mere hypothetical is insufficient to establish standing, particularly on the chain of events Petitioner presents. *See Whitmore*, 495 U.S. at 158. Instead, the Supreme Court has "repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact, and that allegations of *possible* future injury are not sufficient." *Clapper*,

568 U.S. at 409 (internal quotations, alterations, and citations omitted). In fact, this conclusion is the only sensical one given that Petitioner is scheduled for a merits hearing on June 30, 2025. Ex.G.

At its core, the Petition and Motion for TRO seek to enjoin a statute and procedures that the government has never subjected Petitioner to and, in fact, has specifically determined he *is not* currently subject to. Under these facts, Petitioner cannot establish standing on the merits of any of his claims, and he therefore is not entitled to a TRO or preliminary injunction. *Murthy*, 603 U.S. at 58. The Court should lift the TRO without evaluating the merits of Petitioner's underlying claims because any evaluation of the merits—even whether Petitioner shows a substantial likelihood of success on his individual claims—would constitute an impermissible advisory opinion. *See Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005) ("In the absence of standing, a court is not free to opine in an advisory capacity about the merits of a plaintiff's claims.").

II. Petitioner fails to satisfy the elements of a TRO.

A. Petitioner cannot show a substantial likelihood of success on the merits.

Even assuming Petitioner could establish standing—which he cannot—the TRO should be lifted because he cannot show a likelihood of success on the merits of any of his claims.

1. The Court lacks jurisdiction over some of Petitioner's claims.

At the outset, Petitioner cannot succeed on the merits because the Court lacks jurisdiction to enjoin his transfer as requested in the Motion for TRO or review the President's Proclamation as requested in the Petition.

a. The Court lacks jurisdiction to enjoin Petitioner's transfer.

The Court lacks subject matter jurisdiction to enjoin ICE/ERO from transferring him to another detention facility. Petitioner is detained solely under the INA, and the decision to transfer a non-citizen is committed to ICE/ERO's discretion by statute. Section 1252(a)(2)(B)(ii) of Title 8—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act

("IIRIRA") of 1996, Pub. L. No. 104-208, div. C, § 305(a)(3), 110 Stat. 3009-546, 602—limits federal courts' jurisdiction to judicially review discretionary determinations in the immigration context as follows:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to review . . . any . . . 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[.]

"[*M*]*any* provisions of IIRIRA are aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation." *Reno v. American-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 486 (1999) (citations omitted) (emphasis in original). In promulgating § 1252(a)(2)(B)(ii) specifically, "Congress barred court review of discretionary decisions only when Congress itself set out [ICE/ERO's] discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010).

By statute, ICE/ERO has the discretion to determine the "appropriate place[] of detention for [non-citizens] detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1). Multiple circuit courts of appeals have held that § 1231(g)(1) gives ICE/ERO the "discretionary power to transfer [non-citizens] from one locale to another, as [DHS] deems appropriate[.]" *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (citations omitted); *see Calla-Collada v. Att'y Gen. of U.S.*, 663 F.3d 680, 685 (3d Cir. 2011) ("Thus, as a part of DHS, ICE necessarily has the authority to determine the location of detention of an alien in deportation proceedings . . . and therefore, to transfer aliens from one detention center to another.") (cleaned up); *Gandarillas-Zambrana v. Bd. of Immigr. Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995); *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985); *Golding v. DHS/ICE*, No. 4:19-cv-01160, 2019 WL 11720287, at *2 (N.D. Ala. Oct. 3, 2019); *Sasso v. Milhollan*, 735 F. Supp. 1045, 1048 (S.D. Fla. 1990). The Third Circuit has explained that under 8 U.S.C. § 1231(g)(1), "the place of detention is left to the

discretion" of the Government. *Sinclair v. Att'y Gen. of the United States*, 198 F. App'x 218, 222 n.3 (3d Cir. 2006) (rejecting alien's argument that the government could not transfer him from New York to York, Pennsylvania for removal proceedings) (citing 8 U.S.C. § 1231(g)(1) ("The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.").[5]

Thus, the terms of § 1231 and § 1252(a)(2)(B)(ii) preclude this Court from reviewing or enjoining the government's exercise of discretion in transferring Petitioner from one detention facility to another. *See Fattah v. Sabol*, No. 3:08-CV-1325, 2008 WL 2914856 , at *1 (M.D. Pa. July 24, 2008) ("when read in conjunction with 8 U.S.C. § 1252(a)(2)(B)(ii), there is a question as to whether this Court has jurisdiction to review" DHS transfer of detained non-citizen); *see also Singh v. Whitaker*, 362 F. Supp. 3d 93, 106 (W.D.N.Y. 2019), *appeal withdrawn sub nom. Singh v. Barr*, No.19-729, 2019 WL 2590582 (2d Cir. May 1, 2019) ("[T]here is no need to interfere with DHS's authority to "arrange for appropriate places of detention" under § 1231(g)(1)); *Van Dinh v. Reno*, 197 F.3d 427, 433-34 (10th Cir. 1999) (denying challenge to immigration detainee transfers due to lack of jurisdiction).

Because any transfer of Petitioner is a discretionary decision of ICE/ERO, § 1252(a)(2)(B)(ii) deprives the Court of jurisdiction to judicially review or enjoin that transfer. *See Van Dinh*, 197 F.3d at 433; *Golding*, 2019 WL 11720287, at *2; *Lway Mu v. Whitaker*, No. 6:18-cv-06924, 2019 WL 2373883, at *5 (W.D.N.Y. June 4, 2019). The Court therefore lacks

[5] *See also In Washington v. Ashcroft*, No. Civ. A. 05-5213 JLL, 2006 WL 314527, at *1 n.2 (D.N.J. Feb. 9, 2006) (finding no jurisdiction over a motion to prevent a transfer to another detention facility by an alien who was subject to a final order of removal); *Ousman D. v. Decker*, Civ. No. 20-2292 (JMV), 2020 WL 1847706, at *10 (D.N.J. Apr. 13, 2020) (declining to rule on prospective issue of transfer to another facility, but noting court would not lose jurisdiction over the petition even if he was transferred).

jurisdiction to enjoin Petitioner's transfer, and the Court should lift the TRO. *Compare A.S.R.*, 2025 WL 1378774, at *8.[6]

b. The Court lacks jurisdiction to review the Proclamation.

This Court has ruled that the proclamation complies with the AEA, because the Proclamation describes a "Predatory Incursion by TdA" and "Meets the Definitions of "Against the Territory of the United States" and "by any Foreign Nation or Government." *A.S.R.*, 2025 WL 1378784, at *17-18. For this reason alone, Petitioner's claim that the AEA is *ultra vires* fails and the TRO should be lifted.

For preservation purposes, Respondents maintain their argument that the Court lacks jurisdiction to review the Proclamation or enjoin the President's exercise of authority under Article II and the AEA. The Supreme Court has long recognized that courts cannot issue an injunction purporting to supervise the President's performance of his duties. *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867) (courts have "no jurisdiction . . . to enjoin the President in the performance of his official duties"); *Trump v. United States*, 603 U.S. 593, 607 (2024) (recounting that the President "has important foreign relations responsibilities: [including] . . . recognizing foreign governments . . . overseeing international diplomacy and intelligence gathering, and managing matters related to terrorism . . . and immigration").

Consistent with that rule, courts have held for over a century that the President's authority and discretion under the AEA is not subject to judicial scrutiny: "The authority of the President to promulgate by proclamation or public act 'the manner and degree of the restraint to which they (alien enemies) shall be subject, and in what cases,' is, of course, plenary and not reviewable." *Ex*

[6] Strong policy reasons support this conclusion. Respondents are charged with ensuring the safety of both detainees and staff at detention facilities. Interference with operational decisions (such as movement of detainees), would put fulfillment of that charge at risk.

parte Gilroy, 257 F. 110, 112 (S.D.N.Y. 1919) (emphasis added); *see also id.* ("Once the person is an alien enemy, obviously the course to be pursued is essentially an executive function, to be exercised in the discretion of the President."); *see also, e.g., Ludecke v. Watkins*, 335 U.S. 160, 163-64 (1948) (reasoning, on appeal from "[d]enial of a writ of habeas corpus," that "some statutes 'preclude judicial review'" and "the Alien Enemy Act of 1798 is such a statute," as demonstrated by the clear text and "controlling contemporary construction"); *id.* at 164-65 (noting that "every judge before whom the question has since come has held that the statute barred judicial review"); *United States ex rel. Schlueter v. Watkins*, 67 F. Supp. 556, 565 (S.D.N.Y. 1946) ("[C]ourts are without power to review the action of the executive in ordering removal of an alien enemy . . . except with respect to . . . whether the relator is an enemy alien"), *aff'd*, 158 F.2d 853 (2d Cir. 1946). Ultimately, "[t]he very nature of the President's power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of his discretion." *Ludecke*, 335 U.S. at 164; *Citizens Protective League v. Clark*, 155 F.2d 290, 296 (D.C. Cir. 1946).

This Court lacks power to review the President's Proclamation because whether the AEA's preconditions are satisfied is a political question committed to the President's discretion, no different from the President's determination to trigger the Constitution's Invasion Clause (Article IV, section 4). *See United States v. Abbott*, 110 F.4th 700, 728 (5th Cir. 2024) (Ho, J., concurring) ("Courts across the country have held that determining whether an invasion has occurred for purposes of Article IV, section 4 is a nonjusticiable political question. . . ." (collecting cases)); *see also California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997) (collecting cases). Any challenge to that determination is therefore foreclosed. The Supreme Court has held that the political-question doctrine is "essentially a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 217 (1962). To guide courts, the Supreme Court identified six factors that indicate a question has been committed to the political branches. *See, e.g., id.* at 217; *Kuwait Pearls Catering*

Co., *WLL v. Kellogg Brown & Root Servs., Inc.*, 853 F.3d 173, 178-79 (5th Cir. 2017). The President's determination under the AEA independently satisfies at least two of the six factors.

First, the determination that an "invasion" or "predatory incursion" is being perpetrated sits at the intersection of two areas the Constitution commits to the political branches: (1) foreign affairs, *see Barclays Bank PLC v. Franchise Tax Bd.*, 512 U.S. 298, 327-28 (1994); and (2) immigration policy, *see Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed

> any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.

Harisiades v. Shaughnessy, 342 U.S. 580, 588-89 (1952). Similarly, the power to recognize foreign states and governments "resides in the President alone." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 28 (2015).

Second, even without the clear textual commitment to the Executive of the constitutional responsibilities undergirding issuance of the Proclamation, there are no manageable standards permitting courts to assess exactly when hostile entry and criminal and violent acts constitute an "invasion" or "predatory incursion" for AEA purposes. *See Martin v. Mott*, 25 U.S. 18, 31-32 (1827) (Story, J.). Thus there is no basis for second-guessing the Executive's policy judgment that such an "invasion" or "predatory incursion" is occurring. *See Chi. & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948) ("The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world. It would be intolerable that courts . . . should review and perhaps nullify actions of the Executive taken on information properly held secret."). AEA proclamations are thus conclusive and preclusive.

2. The AEA Notice Procedures Comport with Due Process.

The due process owed under the AEA is "flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). For removals pursuant to the AEA, the 21-day process ordered by this Court in *A.S.R.*, 2025 WL 1378784, at *20, will ensure adequate notice prior to removal. Therefore, Petitioner cannot succeed on his claims asserting that the AEA provides insufficient notice and thus that he suffers a due process violation.

For purposes of preservation, Respondents note the expedited removal process under the IIRIRA. The entire purpose of the Act was to "substantially shorten and speed up the removal process" for those "who [are] arriving in the United States[,]" or have not shown that they were "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 618-19 (D.C. Cir. 2020) (quoting 8 U.S.C. § 1225(b)(1)(A)(i), (iii)). If an immigration officer determines that an alien is inadmissible because they do not have valid entry documents, the "officer shall order the alien removed . . . without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). Even if the individual claims asylum or a fear of persecution, the "process is scarcely more involved" because the immigration officer can quickly deny the claim. *Make the Rd. N.Y.*, 962 F.3d at 618-19 (citing 8 U.S.C. § 1225(b)(1)(B)(iii)(III)). In fact, Congress was explicit on how fast this process was supposed to be: "Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I)." 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

The D.C. Circuit[7] has held that this satisfies due process. *See Am. Immigr. Laws. Ass'n v. Reno*, 18 F. Supp. 2d 38, 58 (D.D.C. 1998), *aff'd*, 199 F.3d 1352, 1357 (D.C. Cir. 2000) (affirming "the dismissal of these claims substantially for the reasons stated in the court's thorough opinion"). This was because the Supreme Court has been clear that "the power to expel or exclude aliens is a fundamental sovereign attribute exercised by the Government's political departments, largely immune from judicial control." *Id.* (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)). Several circuit courts of appeals—including the Eleventh Circuit—have similarly concluded that the expedited removal process comports with due process. *See Francis v. U.S. Att'y Gen.*, 603 F. App'x 908, 911-13 (11th Cir. 2015); *United States v. Garcia-Martinez*, 228 F.3d 956, 961 (9th Cir. 2000); *United States v. Rangel de Aguilar*, 308 F.3d 1134, 1138 (10th Cir. 2002); *United States v. Benitez-Villafuerte*, 186 F.3d 651, 659 (5th Cir. 1999).

The reasoning that supports the constitutionality of the expedited removal process applies equally here. Indeed, much like with the AEA, the Executive has wide "sole and unreviewable discretion" to determine who is subject to the two-year period for expedited removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(I). And as in this case, judicial review of expedited removal orders is only available in habeas corpus proceedings. *Javier Gonzalez v. U.S. Att'y Gen.*, 844 F. App'x 129, 131-32 (11th Cir. 2021) (per curiam) (citing 8 U.S.C. § 1252(e)(2)).

3. The AEA does not conflict with the INA.

To the extent Petitioner argues the INA is the exclusive mechanism to remove aliens and that the AEA is unlawful because it deprives aliens of various protections under the INA, Petitioner's assertions are flawed and he cannot show a likelihood of success in either respect. This

[7] Under 8 U.S.C. § 1252(e)(3), a person may challenge the constitutionality and legality of the expedited removal provisions, regulations implementing those provisions, or written policies to implement the provisions. Such challenges, however, ***must be brought within 60 days after implementation and only in the District of Columbia***. *Id.* § 1252(e)(3)(A)-(B).

Court has concluded that the AEA is not in conflict with the INA and so there are no viable claims under that theory. *See A.S.R.*, 2025 WL 1378784, at *20-21.

Nonetheless, for purposes of preservation, Respondents provide the following argument in support of their position that no conflict exists between the AEA and the INA.

First, the INA is not the sole mechanism for removal of aliens. The determination required under the AEA does not relate to the "admissibility" or "deportability" of any alien, so there is no reason to believe that Title 8 and its "sole and exclusive" means for addressing *those* questions is implicated with respect to an alien designated under the AEA. *See* 8 U.S.C. § 1229a(a)(3) (removal proceedings are "exclusive" only to the extent the government is determining admissibility or removability, as those terms are defined under Title 8). Rather, the INA and AEA are distinct mechanisms for effectuating the removal of certain aliens, just as Title 42 and the INA constitute different bases for *excluding* aliens. *See generally Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 727-33 (D.C. Cir. 2022).

Further, the immigration laws and AEA have been read harmoniously for over 75 years. *See United States ex rel. Von Kleczkowski v. Watkins*, 71 F. Supp. 429, 437 (S.D.N.Y. 1947). Not all alien enemies will be subject to removal under Title 8 because alien enemies are subject to Title 50 regardless of whether they have been found inadmissible or removable through Title 8 removal proceedings. Likewise, not all aliens subject to Title 8 will be subject to removal under the AEA—as removal under the AEA is premised on discrete findings, such as nationality and age, beyond admissibility or removability. And for aliens subject to both Title 8 and Title 50, the Executive has discretion in deciding how and whether to proceed under either or both statutes. *See id.* (recognizing this discretion under pre-INA immigration law). Thus, the AEA, INA, and the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") coexist with some overlap that gives the Executive discretion to determine how, whether, or when to apply them. *See, e.g.*, *Epic Sys. Corp.*

v. Lewis, 584 U.S. 497, 510 (2018) ("When confronted with two Acts of Congress allegedly touching on the same topic, this Court . . . must . . . strive to give effect to both." (cleaned up)).[8]

Even if there *were* a conflict between the AEA and the INA, the AEA would control in this circumstance. "[I]t is a commonplace of statutory construction that the specific governs the general." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). Here, the AEA provides specific rules for the removal of a subset of aliens—those designated as alien enemies through a discrete mechanism providing authority to the President—against the more general provisions relating to removability provided by the INA. Thus, to the extent there may be any conflict, the AEA provides an exception to the more general applicability of the INA's removal provisions, and this is true regardless of the later enactment of the INA. *See, e.g., Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.").

Second, there is no direct conflict between the United States' obligations under the Convention Against Torture ("CAT") as codified by the FARRA and removals under the AEA. The United States continues to abide by its policy not to remove aliens to countries in which they are likely to be tortured. *See Munaf v. Geren*, 553 U.S. 674, 702 (2008). And the Eleventh Circuit has specifically held that district courts lack jurisdiction over claims arising from an alien's request for relief under the CAT. *Linares v. Dep't of Homeland Sec.*, 529 F. App'x 983, 983-84 (11th Cir. 2013).

Nor is there a colorable argument that enemy aliens *must* be permitted to seek relief or protection prior to removal. Such relief is generally permitted only in the exercise of the President's

[8] For these reasons, Petitioner's claim that that AEA violates FARRA is meritless. More to the point, Petitioner's claim that he is at imminent threat of being returned to a country where it is more likely than not that he would face torture, ECF 1 at 8 ¶¶36, 37, overlooks that he has an upcoming merits hearing at which his claims in this regard will be examined.

discretion. *See Citizens Protective League*, 155 F.2d at 294 (noting common-law rule that "alien enemies have no rights, no privileges, unless by the king's special favor"). Petitioner's asserted conflict between the INA and the AEA is illusory. The INA provides a system for determining removability and any relief or protection from removal for aliens under the authority of Title 8, whereas the AEA provides its own mechanisms permitting the President or his delegates to implement procedures and regulations governing removal, detention, and any other issue related to invocation of the AEA, *see* 50 U.S.C. § 21.

With respect to asylum and statutory withholding of removal, none of the cited provisions constrain the *President's* actions under Title 50. *See* 8 U.S.C. § 1158(b)(1)(A) (Attorney General or Secretary of Homeland Security); 8 U.S.C. § 1231(b)(3) (Attorney General); 8 C.F.R. §§ 1208.16, 1208.18 (immigration judges, via delegation from the Attorney General); *see also Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 172-73 (1993) (recognizing distinct grants of authority under the INA to the President and Attorney General among others). Nor are such constraints implicated just because the President has delegated certain authorities, including implementation of the Proclamation, to the Attorney General. *See id.* at 172 n.28 (in implementing the Proclamation, Attorney General is "carrying out an executive, rather than a legislative, command, and therefore would not necessarily [be] bound" by provisions of the INA).

Nevertheless, aliens subject to removal under Title 50 are barred from asylum and withholding of removal. Asylum is a discretionary form of relief, and eligibility for such relief may be foreclosed on a categorical basis. *See Huisha-Huisha*, 27 F.4th at 730-31. Here, the AEA disallows relief for covered alien enemies, and that represents the Executive's categorical conclusion that such aliens are not entitled to relief in the exercise of discretion. Likewise, aliens subject to removal under the AEA would not be eligible for statutory withholding of removal because the President's invocation of the AEA suggests that "there are reasonable grounds to

believe that [such aliens are] a danger to the security of the United States." 8 U.S.C. § 1231(b)(3)(B)(iv).

B. Petitioner cannot show a substantial threat of irreparable harm.

Even assuming Petitioner could show that he had standing and that there was a substantial likelihood of success on the merits of any of his claims—which he cannot—the TRO should be lifted because Petitioner still cannot establish a substantial threat of irreparable harm in the absence of a TRO. *See Am. Civ. Liberties Union of Fla.*, 557 F.3d at 1198 ("Failure to show any of the four [TRO] factors is fatal . . . ." (citation omitted)).

An irreparable injury for the purpose of a TRO "must be neither remote nor speculative, but actual and imminent." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (citations omitted). Here, Petitioner appears to allege four possible threats of harm: (1) the general risk of transfer to another ICE detention facility; (2) the general risk of removal under the AEA, (3) the risk that he would be removed to El Salvador or a third country under the AEA, and (4) the risk of wrongful application of the AEA to him. As an initial matter, all of Petitioner's alleged threats of harm are based on his removal. However, as the Supreme Court has recognized, "[i]t is . . . plain that the burden of removal alone cannot constitute the requisite irreparable injury." *Nken*, 556 U.S. at 435.

But for many of the same reasons that he cannot establish standing, *see supra* § I, Petitioner also fails to establish an imminent threat of harm redressable by a TRO. The reason is simple: all of Petitioner's alleged injuries purportedly justifying a TRO are premised on ICE/ERO moving him to another ICE facility and ICE/ERO designating him under the AEA. Not only has he *not* been designated under the AEA at all, *see* Doc.1 at 4; Ex.A at 1, the triggering event for his instant legal action—the closure of his commissary account—was universal to all detainees at MVPC. Ex.J ¶1. Whatever injury that closure amounted to, the injury is woefully insufficient to show an

imminent threat of harm redressable by a TRO. On these facts, there is simply no present injury to redress.

Further, even if the Court finds standing, Petitioner's alleged threats are not presently imminent to warrant relief through a TRO. At the TRO stage, "the harm considered by the district court is necessarily confined to that which might occur in the interval between ruling on the preliminary injunction and [ruling] on the merits." *Lambert*, 695 F.2d at 540. "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974). Here, to the extent Petitioner hypothetically could be transferred to another ICE facility and designated under the AEA, he can—and indeed, already has—raise his claims in the litigation. There is no risk of harm in the interim because Petitioner has not been designated under the AEA. Put differently, the harm Petitioner seeks to prevent through the TRO is just as "remote [and] speculative," *Siegel*, 234 F.3d at 1176, as the purported injuries underlying his claims in the Petition. In these circumstances, Petitioner cannot satisfy this element of a TRO.

C. The balance of equities and the public interest weigh against an injunction.

The balance of harms and the equities strongly favor the government here as an injunction irreparably harms the conduct of foreign policy. "For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews*, 426 U.S. at 81. "[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Harisiades*, 342 U.S. at 589. "[O]ver no conceivable subject is the legislative power of Congress more complete[.]" *Fiallo*, 430 U.S. at 792 (internal quotations and citation omitted). For these reasons, the Supreme Court has "long recognized the power to expel or exclude

aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Id.* (collecting cases). Additionally, the Supreme Court has warned of "the danger of unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013).

Petitioner's proposed TRO intrudes on the Executive's authority, impeding the Executive's ability to swiftly remove alien enemies under the Proclamation. *See Nken*, 556 U.S. at 436 ("There is always a public interest in prompt execution of removal orders . . . ." (internal quotations, alterations, and citation omitted)). Beyond removal, enjoining the Executive's ability to transfer detainees will work harm on the government's immigration-enforcement operations. As explained above, Petitioner is detained solely for proceedings under the INA, and ICE/ERO's transfer of detainees is committed solely to ICE/ERO's discretion. *See* 8 U.S.C. § 1231(g)(1); *supra* sec. II.A.1.a. The balance of the equities and the public interest both weigh in Respondent's favor and counsel against interference with core Executive functions.

CONCLUSION

For the reasons set forth above, Petitioner's Motion for TRO should be lifted.

Respectfully submitted this 27the day of May, 2025.

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