UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KASRA REZAEE,

Petitioner,

v. Case No.: 6:25-cv-1140-CEM-DCI

PRESIDENT OF THE UNITED STATES; SECRETARY, DEPARTMENT OF HOMELAND SECURITY; U.S. ATTORNEY GENERAL; DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; ASSISTANT FIELD OFFICER IN CHARGE OF MIAMI FIELD OFFICE; CHIEF, and ORANGE COUNTY CORRECTIONS DEPARTMENT

Respondents.

RESPONSE IN OPPOSITION TO PETITIONER'S AMENDED MOTION FOR RESTRAINING ORDER AND PRELIMINARY INJUUNCTION AND MOTION TO DISMISS AMENDED PETITION

Respondents, by and through the undersigned Assistant U.S. Attorney, hereby respond in opposition to Kasra Rezaee's ("Petitioner") amended emergency motion for a restraining order and preliminary injunction, and move to dismiss his amended petition for lack of jurisdiction and failure to state a claim pursuant to Federal Rules

of Civil Procedure 12(b)(1) and 12(b)(6), respectively. As support, Respondents state as follows:

BACKGROUND

Petitioner is a national and citizen of Iran who entered the United States without inspection on or about February 12, 2023, and was apprehended shortly thereafter. (Doc. 9 ¶¶ 10, 18; Criminal Complaint, Ex. A at 1). At that time, Petitioner was found to be amenable to expedited removal and was processed in accordance with the Immigration and Nationality Act ("INA") §235(b)(1). On February 16, 2023, he was issued an expedited removal order. (Notice to Alien Ordered Removed/Departure Verification, Ex. B).

That same day, Petitioner was processed for a credible fear interview and provided relevant information because he claimed fear of returning to his home country. (Information About Credible Fear Interview, Ex. C). On February 21, 2023, Petitioner was charged with violation of 19 U.S.C. § 1459(a), Failure to Comply with Reporting Requirements, and sentenced to imprisonment for a term of seven (7) months with credit for time served since February 12, 2023. (Ex. A at 1–5). Petitioner was subsequently taken into ICE custody. (Record of Deportability/Inadmissible Alien, dated September 14, 2023, Ex. D at 1).

In December 2023, Petitioner was processed as an expedited removal and found to have a credible fear. (*Id.* at 4). He was served an I-862, Notice to Appear, placed in removal proceedings, and charged under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i). (Notice to Appear, Ex. E at 1–2). On January 12, 2024, he was paroled for a one-year

period pursuant to 8 U.S.C. § 1182(d)(5) and released from custody. (Notice Authorizing Parole, Ex. F).

An initial hearing an Immigration Judge found Petitioner removable under INA § 212(a)(6)(A)(i) and designated Iran as the country of removal. (Doc. 9 ¶¶ 18, 20; Doc. 10-2 at 2). Petitioner filed an I-589, Application for Asylum and Withholding of Removal ("Application"), before the Immigration Court. (*Id.*). On June 25, 2025, during a hearing on his Application, Petitioner was brough back into custody by U.S. Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE"). (Doc. 9 ¶ 21; Record of Deportability/Inadmissible Alien dated June 25, 2025, Ex. G).

Petitioner is currently being detained at the Broward Transitional Center in Pompano Beach, Florida pursuant to under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). (*See* Notice to EOIR: Alien Address, Ex. H (providing Petitioner's address); *see also* Notice to Alien Ordered Removed/Departure Verification, Ex. I (stating that Petitioner was "found inadmissible as an arriving alien in proceedings under section 235(b)(1) or 240 of the [INA]").

On June 30, 2025, Petitioner filed an amended habeas petition and emergency motion for temporary restraining order and preliminary injunction, (*see* Docs. 9, 10), to which the Court ordered Defendant to respond on or before July 8, 2025. For the reasons stated below, the Petitioner's amended petition should be dismissed and his amended motion for temporary restraining order and preliminary injunction should be denied.

LEGAL STANDARDS

A. Rule 12(b)(1) – Lack of Subject Matter Jurisdiction

Federal Rule of Civil Procedure 12(b)(1) requires dismissal of claims where the Court "lack[s] jurisdiction over the subject matter." Fed. R. Civ. P. 12(b)(1). A court may resolve a motion to dismiss brought pursuant to Fed. R. Civ. P. 12(b)(1) in two ways: a facial challenge or a factual challenge. *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1230 (11th Cir. 2021). "A facial attack challenges whether a plaintiff "has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Id.* By contrast, a factual attack "challenges the existence of subject matter jurisdiction irrespective of the pleadings, and extrinsic evidence may be considered." *Id.*

B. Rule 12(b)(6) – Failure to State a Claim

Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the complaint, not the merits of the allegations. To survive a motion to dismiss under this Rule, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

LEGAL ARGUMENT

A. The Court Lacks Jurisdiction Over Petitioner's Claims.

The Petitioner has been subject to expedited removal and is detained pending his removal proceedings. Habeas corpus review in federal district court is not available

for claims "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." *See* 8 U.S.C. § 1252(g). Nor is it available for claims challenging "any action or decision by the Attorney General regarding . . . the detention or release of any alien or the grant, revocation, or denial of bond or parole."

These provisions deprive the Court of jurisdiction because the Petitioner's challenge his detention which arise from decisions and actions by the Secretary of Homeland Security to take him into custody and pursue Petitioner's removal proceedings after his parole terminated. *See Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) (concluding that that the petitioner's constitutional claims regarding his alleged illegal arrest, detention, and search and seizure of his property were barred by § 1252(g) because they " arise from actions taken to commence proceedings"); *Mohammad v. Creel*, No. 4:13CV274-RH/CAS, 2014 WL 204426, at *3 (N.D. Fla. Jan. 17, 2014) finding a lack of jurisdiction because the petitioner challenged decision regarding his detention), *adopted*, 4:13cv274-RH/CAS, Doc. No. 21 (N.D. Fla. Jan. 17, 2014); Petitioner challenges his detention, alleging that ICE should instead release him with an order of supervision to report to 26 Federal Plaza. ECF No. 1 at 5; *Williams v. DHS/ICE/Immigr. Ct.*, No. 22-CV-6539-FPG, 2023 WL 3585849, at *2 (W.D.N.Y. May 22, 2023) (same); *Marcelo v. United States*, No. 8:24-CV-757-TPB-NHA, 2024 WL 1417394, at *1 (M.D. Fla. Apr. 2, 2024) (concluding that "[b]ecause a detainer has been lodged to secure Petitioner while awaiting a removal determination, the Court is without jurisdiction."); *Terraza v. Dep't of Homeland Sec.*

(DHS), No. 8:24-CV-584-TPB-AEP, 2024 WL 1095947, at *1 (M.D. Fla. Mar. 13, 2024) (same).

Accordingly, the Court lacks jurisdiction to review such claim.

B. Petitioner Fails to Adequately State a Claim for Relief.

Petitioner brings two claims against Respondents, claiming that his warrantless arrest and detention violates his due process rights under the Fifth Amendment and exceeds ICE's lawful authority. Petitioner's claims fail as a matter of law.

"[A]n alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Jennings v. Rodriguez*, 138 S. Ct. 830, 838 (2018) (quoting 8 U.S.C. § 1225(a)(1)). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Id.*

> Aliens covered by § 1225(b)(1) are normally ordered removed without further hearing or review" pursuant to an expedited removal process. § 1225(b)(1)(A)(i). But if a § 1225(b)(1) alien indicates either an intention to apply for asylum . . . or a fear of persecution, then that alien is referred for an asylum interview. § 1225(b)(1)(A)(ii). If an immigration officer determines after that interview that the alien has a credible fear of persecution, the alien shall be detained for further consideration of the application for asylum. § 1225(b)(1)(B)(ii). Aliens who are instead covered by § 1225(b)(2) are detained pursuant to a different process. Those aliens shall be detained for a [removal] proceeding if an immigration officer "determines that [they are] not clearly and beyond a doubt entitled to be admitted" into the country. § 1225(b)(2)(A).

Id. at 837 (internal quotations omitted).

Sections 1225(b)(1) and (b)(2) both "mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are

detained for 'further consideration of the application for asylum, and § 1225(b)(2) aliens are in turn detained for '[removal] proceeding[s].'" *Id.* at 842 (internal quotations omitted).

"Regardless of which of those two sections authorizes their detention, applicants for admission may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" *Id.* at 837 (citing 8 U.S.C. § 1182(d)(5)(A)). Such parole, however, "shall not be regarded as an admission of the alien." *Id.* Instead, an alien detained under § 1225(b) who is released from detention pursuant to a grant of parole under § 1182(d)(5)(A), and whose grant of parole is subsequently terminated,[1] is returned to custody under section § 1225 pending the completion of removal proceedings. *Id.* (citing 8 U.S.C. § 1182(d)(5)(A)); 8 U.S.C. § 1226(b) ("The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien."); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 71 (BIA 2025) (explaining that "once the [respondent's] grant of parole was terminated, she was required to "forthwith return or be returned to the custody" under section 235(b) "from which [she] was paroled." (quoting INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)).

Here, Petitioner illegally entered the United States without inspection and was processed for expedited removal under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1).

[1] The government may terminate parole automatically without written notice to the alien if the alien departs from the U.S. or if the time for which parole was authorized expires. 8 C.F.R. § 212.5(e)(1).

Pursuant to § 1182(d)(5), he was paroled through January 12, 2025. (Ex. C). After the automatic termination of his parole, Petitioner was arrested and brought back into custody because his parole had already expired. Neither a warrant nor notice was required for Petitioner's arrest and detention. Indeed, § 1182(d)(5) mandates that an alien "shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *See* 8 U.S.C. § 1182(d)(5)(A).[2]

Thus, Petitioner's detention is constitutional and within ICE's statutory authority. Petitioner is being lawfully detained. Thus, his petition must be dismissed. *Bermudez Paiz v. Decker*, No. 18CV4759GHWBCM, 2018 WL 6928794, at *18 (S.D.N.Y. Dec. 27, 2018) (explaining that, pursuant to 8 C.F.R. § 212.5(e)(2)(i), Department of Homeland Security ("DHS") is permitted to re-detain an alien once their parole has been terminated); *see also Matter of Q. Li*, 29 I&N Dec. 66, 70 (BIA 2025) ("[A]n alien detained under section 235(b) who is released from detention pursuant to a grant of parole under section 212(d)(5)(A), and whose grant of parole is subsequently terminated, is returned to custody under section 235(b) pending the completion of removal proceedings.").

[2] To the extent Petitioner contends he was entitled to notice before his parole was terminated, he is incorrect. *See* 8 C.F.R. § 212.5(e)(1)(ii).

C. Petitioner is Not Entitled to a Restraining Order or Preliminary Injunction.

If, for some reason, the Court were to allow Petitioner's claims to proceed, he is not entitled to a restraining order or a preliminary injunction. As an initial matter, Petitioner has not cited to any law that authorizes the Court to bar Defendant from transferring him outside the Middle District of Florida. The responsibility of determining where aliens are detained is within the discretion of the Attorney General. *See* 8 U.S.C. §1231(g)(1)(2006) ("The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.").

Indeed, Federal courts have consistently held that § 241(g) grants the executive branch broad discretion in exercising his authority to choose the place of detention for deportable aliens. *See, e.g., Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1440 (9th Cir.), *amended*, 807 F.2d 769 (9th Cir. 1986); *Avramenkov v. INS*, 99 F. Supp. 2d 210, 213 (D. Conn. 2000); *Sasso v. Milhollan*, 735 F. Supp. 1045, 1048 (S.D. Fla. 1990) (explaining that the Attorney General has the authority to determine the location of detention of an alien in deportation proceedings).

Thus, the Court is precluded from interjecting "itself in the supervision of the Attorney General's daily exercise of his discretion to select the place of detention of aliens in his custody." *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1441 (9th Cir.), *amended*, 807 F.2d 769 (9th Cir. 1986). Petitioner's request for a restraining order and injunctive relief should be denied on this basis alone.

Furthermore, Petitioner's request is due to be denied because he cannot establish any of the four prerequisites necessary to obtaining a restraining order or a preliminary injunction—specifically, "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005).

1. Petitioner has not demonstrated a substantial likelihood of success of the merits.

Petitioner has failed to demonstrate a substantial likelihood of success on the merits because, as explained *supra*, his claims are jurisdictionally barred and fail as a matter of law.

2. Petitioner has not established irreparable harm.

To satisfy this requirement, Petitioner must demonstrate that absent a preliminary injunction he will suffer an injury that is neither "remote nor speculative, but actual and imminent," and one that cannot be remedied if a court waits until the end of trial to resolve the harm. *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am.*, 896 F.2d 1283, 1285 (11th Cir. 1990) (quoting *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 973 (2d Cir. 1989)).

Petitioner speculates that if he is transferred outside the Middle District of Florida, it will "impede his ability to participate in his removal proceedings." (Doc. 10-1 at 9). However, he provides no evidence to support his assertion. Petitioner will

be able to continue his removal proceedings while in detention. In fact, Petitioner is set for a hearing at the immigration court at Broward Transitional Center on July 16, 2025. (*See* Notice of Hearing, Ex. J). While Petitioner seeks to continue his removal proceedings at the Orlando Immigration Court, that court does not hear detained cases from the Middle District of Florida. Even if Petitioner were detained within the Middle District of Florida at the Baker County Detention Center in Macclenny, Florida, the Krome Immigration Court in Miami, Florida would have administrative control over the case.[3]

Simply put, Petitioner continues to have the same rights throughout his removal proceedings, regardless of venue. *See* 8 U.S.C. § 1229a(4) (Alien's rights in proceedings). This includes having his case heard by an Immigration Judge who will familiarize himself or herself with the record and consider material and relevant evidence. 8 C.F.R. 1240.1(b), (c).

3. Balance of equities and public interest weighs in Respondents favor.

The federal government has a legitimate and compelling interests in preventing unauthorized entry and regulating immigration in a way that protects national security, public safety, and public health. Indeed, courts have "long recognized the power to . . . exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo v.*

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[3] *See* Dep't of Justice, Exec. Off. for Immigr. Rev., Immigration Court List – Administrative Control. https://www.justice.gov/eoir/immigration-court-administrative-control-list#Krome (last visited July 7, 2025).

Bell, 430 U.S. 787, 792 (1977); *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Review*, 959 F.2d 742, 750 (9th Cir. 1992) ("Control over immigration is a sovereign prerogative."); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952) ("[A]ny policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," and such "matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.").

Here, Respondents interest in the efficient and effective administration of the immigration laws substantially outweighs Petitioner's detention preferences and his unsubstantiated assertions that he will not be able to participate in removal proceedings. Furthermore, if Petitioner were permitted to dictate his release and/or location of his detention, it would not serve the public interest, but instead, frustrate the congressional intent to detain illegal aliens whose parole has been terminated. The balance of equities and public interest factors weigh heavily in Respondents' favor. Accordingly, Petitioner's motion should be denied.

WHEREFORE, Respondents respectfully request that the Court: (a) dismiss the Petitioner's amended petition for lack of jurisdiction, or alternatively, for failure to state a claim; (b) and deny his amended motion for a restraining order and preliminary injunction with prejudice.

Dated: July 8, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 8, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice to:

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/s/ Lakisha Davis
Assistant U.S. Attorney