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, et al.,

Respondents.
_____/

REPORT AND RECOMMENDATION ON § 2241 PETITION AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

THIS CAUSE is before the Court on Petitioner Jose Serrano's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (the "Habeas Petition"), ECF No. [1], and his Emergency Motion for a Temporary Restraining Order (the "TRO Motion"), ECF No. [10]. The Honorable K. Michael Moore referred this case to me "to take all necessary and proper action as required by law regarding all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters." ECF No. [7]. For the reasons explained below, I respectfully **RECOMMEND** that the Habeas Petition, **ECF No. [1]**, and the TRO Motion, **ECF No. [10]**, be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

I. BACKGROUND

Petitioner is a citizen of Ecuador who "was lawfully inspected and admitted into the United States at the Miami, Florida International Airport as a nonimmigrant visitor for pleasure" on May 19, 2021. *See* ECF No. [1] at 3. During his authorized stay in the United States, "Petitioner timely

filed an affirmative asylum application (Form I-589) with U.S. Citizenship and Immigration Services."[1] *See* ECF No. [1] at 3. Petitioner's asylum application is based on his "political opinion," his "membership in a particular social group," and the United Nations Convention Against Torture. *See* ECF No. [1-5] at 5.

More specifically, Petitioner asserts he has "suffered persecution" and has "received threats" of "physical violence" against him and his children because he has spoken out against, publicly exposed, and as an Ecuadorian congressman passed legislation against, corruption and fraud within the Ecuadorian government. *See* ECF No. [1-5] at 5. Petitioner asserts that part of the persecution involves being "under investigation by the Ecuador federal authorities" and that he fears he will be subject to "trumped up charges in a corrupt judicial process" or will be "detained and tortured" in an Ecuadorian prison. *See* ECF No. [1-5] at 5–6, 20. He notes he has "cooperated with United States law enforcement" to "assist in investigations of money laundering and kickbacks on government contracts" in Ecuador, which caused him to be "denounced and removed" from his leadership position in the Ecuadorian congress and "targeted" by the Ecuadorian government. *See* ECF No. [1-5] at 20.

Despite his pending asylum application, U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner at his South Florida home on August 7, 2025. *See* ECF No. [1] at 2–3. Since then, Petitioner has been detained at the "Krome Service Processing Center in Miami" under "medium security as a criminal" wearing an orange suit "instead of as a non-criminal asylum seeker" wearing a blue suit. *See* ECF No. [1] at 2–3. According to Petitioner, he has received a bond hearing, but the Immigration Judge ("IJ") declined to issue a bond. *See* ECF No. [1] at 3.

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[1] Petitioner was authorized to remain in the United States until November 18, 2021, and he filed his asylum application on October 29, 2021. *See* ECF No. [1] at 3.

On September 8, 2025, Petitioner filed the Habeas Petition based on his "belief that he has been singled out for detention by" ICE "at the request of and for the benefit of the current Ecuadorian government." *See* ECF No. [1] at 2. Petitioner notes he "is a fierce critic of the current president of" Ecuador and has accused the president's "family of drug dealing," which has made Petitioner "the target of political persecution" there. *See* ECF No. [1] at 1. Petitioner asserts his "targeted detention" by ICE in the United States "to assist the country where he fears persecution is a violation of his due process right to a fair bond hearing." *See* ECF No. [1] at 4. He also asserts that civil "immigration detention becomes unconstitutional when it is unreasonably prolonged" and argues that "his continued custody is a violation of his due process rights" because he "has no criminal history, is pursuing a valid claim for relief, has actively aided the U.S. government, and is subject to a targeted prosecution to benefit his persecutors." *See* ECF No. [1] at 4.

Along with being a due process violation, Petitioner asserts his "targeted detention to assist the country where he fears persecution is a violation of" his "rights under the" Immigration and Nationality Act ("INA") "and under international law to which the" United States "is signatory." *See* ECF No. [1] at 4. He asserts that the "INA does not authorize arbitrary detention" and argues that "his continued detention is statutorily unreasonable and therefore unlawful" given his "pending asylum claim, lack of any criminal history, strong family and community ties, history of cooperation with U.S. authorities, and targeted prosecution by" ICE "to benefit his persecutors." *See* ECF No. [1] at 4. Based on those alleged violations of due process, the INA, and international law, Petitioner asserts he is being "held in custody in violation of the Constitution or laws of the United States" and that the Court should "issue a writ of habeas corpus and order his immediate release." *See* ECF No. [1] at 2.

After screening the Habeas Petition, the Court ordered "Respondent Juan Lopez-Vega, the

Acting Director of ICE's Miami Field Office, and Respondent Todd Lyons, the Acting Director of ICE," pursuant to 28 U.S.C. § 2243, to "file a memorandum of fact and law to show cause why" it "should not be granted and file all documents necessary for its resolution" on or before September 29, 2025. *See* ECF No. [8] at 2; *see also* 28 U.S.C. § 2243 ("A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto."). Respondent Charles Parra, the Assistant Director of ICE's Miami Field Office, timely filed that memorandum on September 29 (the "Response").[2] *See* CF No. [16]. In the Response, Respondents argue the Habeas Petition should be denied for three reasons. *See* ECF No. [16] at 1–2.

First, Respondents argue Petitioner's "detention is lawful under 8 U.S.C. § 1226(a)" as § 1226(a) allows for detention, Petitioner has not cited any authority supporting his contention that he should not be detained because of his "pending asylum application or other alleged equities such as family and community ties," and his "detention has not been unreasonably prolonged" because it lasted only one month before his first bond hearing and, as of the Response, had lasted less than two months. *See* ECF No. [16] at 1, 3–4. Second, Respondents argue that Petitioner has

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[2] As Parra notes, a writ of habeas corpus must "be directed to the person having custody of the person detained," 28 U.S.C. § 2243, which, in cases involving present physical confinement, means the "immediate custodian, not a supervisory official who exercises legal control," *see Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Here, Parra is Petitioner's immediate custodian because Parra is the Assistant Field Office Director at Krome Service Processing Center, where Petitioner is currently detained. For that reason, Respondents assert, and the Court agrees, that the proper Respondent in this case is Parra in his official capacity. *See, e.g.*, *Masingene v. Martin*, 424 F. Supp. 3d 1298, 1302–03 (S.D. Fla. 2020) ("[T]he Court finds that the proper respondent to the Petition is Jim Martin, the Director of the Miami Field Office for ICE."). Accordingly, I respectfully **RECOMMEND** that Parra in his official capacity be **SUBSTITUTED** as Respondent. *See, e.g.*, *Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815, at *3 (S.D. Fla. Sept. 26, 2024) (substituting as Respondent the Assistant Field Director of facility where Petitioner was detained because denial of a habeas petition for failure to name proper respondent would give an unreasonably narrow reading to habeas corpus statute).

had "several bond hearings," including on August 18, August 25, and September 16, and that the IJ ultimately denied bond after finding Petitioner was "a danger to the community and a flight risk." *See* ECF No. [16] at 2, 4–5. Third, Respondents argue the IJ's "denial of bond is unreviewable under 8 U.S.C. § 1226(e)" because it is a "discretionary decision" over which the Court "lacks jurisdiction" to "overturn." *See* ECF No. [16] at 2, 5–6. Petitioner did not file a reply to the Response, despite the Court giving him permission and time to do so. *See* ECF No. [8] at 2.

Petitioner did, however, file the TRO Motion on September 13, 2025. *See* ECF No. [10]. In the TRO Motion, Petitioner asks the Court to order "his immediate transfer from criminal detention to non-criminal asylee detention" or, "in the alternative," his "release from detention." *See* ECF No. [10] at 1. Petitioner argues "the conditions of his detention" put him "in grave danger and require immediate attention" because he is confined "with Ecuadorean drug dealers and gang members" despite being "well known as a fierce critic of the current Ecuadorean President, who he has frequently and publicly accused of involvement in drug trafficking," and prominent for "arresting and convicting hundreds of gang members and drug dealers." *See* ECF No. [10] at 1–2. He argues his "detention as a criminal with criminals appears to be a deliberate strategy by" ICE "to encourage Petitioner to stop pursuing his asylum case and agree to voluntary deportation to Ecuador," which is "an important goal of the current Ecuadorean government" because it would "silence" him, "one of the best known and popular politicians" in Ecuador and the government's "most important and credible critic." *See* ECF No. [10] at 1–2. Petitioner acknowledges that he "has had two bond hearings with an" IJ "since his August 7 arrest" but contends the IJ had made no decision regarding his detention as of September 13 and instead had asked the parties only "one question: whether any charges had yet been placed against Petitioner in Ecuador, which" had not

happened. *See* ECF No. [10] at 3.

In response to the TRO Motion (the "TRO Response"), Respondents start with three procedural hurdles they assert Petitioner faces. *See* ECF No. [13] at 4–10. First, Respondents argue the Court lacks subject-matter jurisdiction over the TRO Motion because several provisions of the INA — specifically, § 1226(e), 8 U.S.C. § 1252(a)(2)(B)(ii), and § 1252(g) — prohibit courts from reviewing discretionary decisions or actions of the Attorney General or the Secretary of the Department of Homeland Security. *See* ECF No. [13] at 5–10. Second, Respondents argue "Petitioner has not exhausted administrative remedies for any objections he has to his classification level" as a criminal detainee instead of a non-criminal asylum seeker because he has not appealed "through a written detainee request form or by filing formal grievances." *See* ECF No. [13] at 11. Third, Respondents argue that, because Petitioner seeks "to force another party to act, rather than simply to maintain the *status quo*," Petitioner actually wants a "mandatory injunction" instead of a temporary restraining order ("TRO"). *See* ECF No. [13] at 4–5. As a result, Respondents assert Petitioner's "burden is even higher" than it would be if he were seeking a TRO. *See* ECF No. [13] at 4.

As to the merits of the TRO Motion, Respondents argue Petitioner's detention is lawful because he is detained under § 1226(a), which does not require his release simply because he is seeking asylum and has no criminal record as Petitioner contends. *See* ECF No. [13] at 11. They note that another provision, § 1226(c) addresses the detention of "criminal aliens" and that "Petitioner's asylum application will be adjudicated in the removal proceedings." *See* ECF No. [13] at 12. Respondents explain that Petitioner's detention "has an end point, specifically the conclusion of removal proceedings," and has not "become prolonged," so they argue "there is no constitutional infirmity." *See* ECF No. [13] at 12. Respondents highlight that Petitioner bears the

burden to show he is neither a danger nor a flight risk, but he failed to meet that burden with the IJ and has not appealed to the Board of Immigration Appeals ("BIA"). *See* ECF No. [13] at 12. And they argue Petitioner has not met the other three requirements for a TRO because he has not shown irreparable harm, that granting injunctive relief will serve the public interest, or that the balance of the equities tips in his favor. *See* ECF No. [13] at 13–15. Regarding irreparable harm, Respondents note Petitioner mentions a fear of murder because "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." *See* ECF No. [13] at 14. Instead, they explain that "the Attorney General's Office in Ecuador formally charged Petitioner with murder" on August 21 based on the allegation that Petitioner "is the mastermind behind the murder of" a former candidate for president of Ecuador. *See* ECF No. [13] at 3.

In his Reply (the "Reply"), Petitioner explains that he has not been charged with murder in Ecuador; instead, on August 18 — after he was already in detention — "Ecuadorean prosecutors attempted for the first time to investigate" him for the "notorious murder of a political candidate," but on September 3, a judge rejected the government's attempt to charge him with the murder after finding "there was no evidence" and "'the prosecutor's office cannot be the enforcement arm of the government of the day.'" *See* ECF No. [14] at 2. As a result, "there are no murder charges against Petitioner, only a continued investigation" and "accusations by Ecuador's corrupt government."[3] *See* ECF No. [14] at 2–3. Still, Petitioner argues it "is obvious from the timing that the charges against Petitioner in Ecuador were invented solely for purposes of" his

[3] To support his assertion that the Ecuadorian government is corrupt, Petitioner notes the judge who rejected the charges was "suspended without pay for three months, for 'disrespect of the prosecutor'" and an official who voted not to sanction the judge was thereafter criminally investigated. *See* ECF No. [14] at 2.

"deportation proceeding" because Petitioner had been out of Ecuador for two years when the murder occurred and was ideologically aligned with the victim in opposition to the Ecuadorian government. *See* ECF No. [14] at 3. In fact, Petitioner asserts the immigration "agent who arrested him" told him that the arrest "was on behalf of Ecuador." *See* ECF No. [14] at 2.

As to the purported procedural hurdles, Petitioner replies that § 1226(e) does not "bar federal courts from reviewing questions of statutory construction or Constitutional claims such as mandatory detention under" § 2241. *See* ECF No. [14] at 4. He argues his "case goes to the core of statutory and constitutional habe[a]s corpus jurisdiction," as allowing the federal government to "jail a non-criminal asylum seeker at the behest of a corrupt foreign government in any conditions they choose" without giving courts jurisdiction to review that detention "would upend the protections put in place for individuals against the government by the framers of the Constitution." *See* ECF No. [14] at 5. More narrowly, Petitioner argues "the legality and constitutionality of" immigration detention "remain open to challenge via habeas corpus, even after statutory reforms were intended to limit judicial review." *See* ECF No. [14] at 5. Petitioner also argues that "Congress has not specifically mandated exhaustion before judicial review of custody determinations" and that the Court should not require exhaustion here because "the BIA has no jurisdiction to adjudicate constitutional issues," so "exhaustion of administrative remedies would be futile." *See* ECF No. [14] at 6–7. Both the Petition and the TRO Motion are now ripe for review.

II. LEGAL STANDARDS

A. The Fifth Amendment, Immigration Detention, and Habeas Corpus

The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "It

is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). "At the same time, however," the Supreme Court has recognized that "detention during deportation proceedings" is "a constitutionally valid aspect of the deportation process." *See Demore v. Kim*, 538 U.S. 510, 523 (2003).

One vehicle through which an alien may be lawfully detained is 8 U.S.C. § 1226(a). Under that statute, "[o]n 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." 8 U.S.C. § 1226(a). While the decision about whether to remove the alien is pending, the Attorney General "may continue to detain the arrested alien." *See id.* § 1226(a)(1). Or, as long as the alien is not a "criminal alien" as defined in § 1226(c), the Attorney General "may release the alien" either on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General" or on "conditional parole." *See id.* § 1226(a)(2); *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018).

"Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). No statute or regulation requires any additional bond hearings after "the initial bond hearing established by existing regulations." *See id.* (noting "[n]othing in § 1226(a)'s text—which says only that the Attorney General may release the alien on bond—even remotely supports the imposition" of "periodic bond hearings every six months" (cleaned up)). "Nor does § 1226(a)'s text even hint that the length of detention prior to a bond hearing must specifically be considered in determining whether the alien should be released." *Id.* But while an alien has no right to an additional bond hearing, he can request a "bond redetermination" with an IJ if his "circumstances

have changed materially since the prior" determination. *See* 8 C.F.R. § 1003.19(e) ("After an initial bond redetermination, an alien's request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination."); *id.* § 1003.19(a) ("Custody and bond determinations made by the service . . . may be reviewed by an" IJ). The alien may also appeal the IJ's decision on "custody status or bond" to the BIA. *See id.* § 1003.19(f). If the Attorney General releases an alien on "bond or parole authorized under" § 1226(a), she "at any time may revoke" that bond or parole, "rearrest the alien under the original warrant, and detain the alien." *See* 8 U.S.C. § 1226(b).

These decisions under § 1226(a) about whether to detain an alien or to release him on bond or parole are entirely within the discretion of the Attorney General and her delegees. *See Patel v. United States Att'y Gen.*, 971 F.3d 1258, 1266–67 & n.7 (11th Cir. 2020), *aff'd sub nom. Patel v. Garland*, 596 U.S. 328 (2022). And their "discretionary judgment regarding the application of" § 1226 "shall not be subject to review." *See id.* § 1226(e). That means "[n]o court may set aside any action or decision by the Attorney General under" § 1226 "regarding the detention of any alien or the revocation or denial of bond or parole." *See id.*; *United States v. Velasquez Velasquez*, 524 F.3d 1248, 1252 (11th Cir. 2008) (noting "the district court lacks the authority to" review or overturn an immigration judge's "decision to release" an alien "on bond pending his immigration proceedings"); *Mayorga*, 2024 WL 4298815, at *9 (declining to address Petitioner's due process argument because the Court did not have jurisdiction to review the Attorney General's detention decision under § 1226(e) or § 1252(b)); *cf. Univ. of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 409–10 (11th Cir. 1999) (noting "federal courts are courts of limited jurisdiction" and must ensure they have subject matter jurisdiction before hearing a case).

But while § 1226(e) bars courts from reviewing challenges to "a decision that the Attorney General has made regarding" an alien's "detention or release," it does not bar courts from review of "constitutional challenge[s] to the legislation authorizing" an alien's "detention without bail" or from habeas review in general. *Demore*, 538 U.S. at 516–17 (quotation marks omitted); *see also Jennings*, 583 U.S. at 295; *Nielsen v. Preap*, 586 U.S. 392, 401 (2019) (plurality op.) (noting § 1226(e)'s "limitation applies only to discretionary decisions about the application of § 1226 to particular cases"). If a non-citizen is detained without bail, a habeas petition under 28 U.S.C. § 2241 "is the proper vehicle through which to challenge the constitutionality of" that detention. *See Oscar v. Ripe*, 751 F. Supp. 3d 1324, 1329 (S.D. Fla. 2024); *cf. Demore*, 538 U.S. at 514–31 (deciding a constitutional challenge to § 1226 brought through a § 2241 habeas petition). That statute authorizes courts to grant a writ of habeas corpus if a person "is in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241(a), (c)(3). As with any lawsuit, when assessing whether to grant a writ of habeas corpus, it is "the facts and substance of the claims alleged, not the jurisdictional labels attached, that ultimately determine whether a court can hear a claim." *See DeRoy v. Carnival Corp.*, 963 F.3d 1302, 1311 (11th Cir. 2020); *Dos Santos v. Meade*, No. 20-CV-22996, 2020 WL 6565212, at *3–4 (S.D. Fla. Nov. 9, 2020) (applying that principle in the context of a § 2241 habeas petition challenging an immigration detention decision under § 1226(a)).

B. Temporary Restraining Orders

"To be entitled to a TRO, a movant must show: (1) a substantial likelihood of ultimate success on the merits; (2) the TRO is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the TRO would inflict on the non-movant; and (4) the TRO would serve the public interest." *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995); *Schiavo ex rel. Schindler*

v. Schiavo, 403 F.3d 1223, 1225–26 (11th Cir. 2005). "The purpose of a temporary restraining order, like a preliminary injunction, is to protect against irreparable injury and preserve the status quo until the district court renders a meaningful decision on the merits." *Schiavo*, 403 F.3d at 1231. This kind of relief "is an extraordinary and drastic remedy and is not to be granted unless the movant clearly established the burden of persuasion as to the four prerequisites." *See id.* (quotation marks omitted).

"The first of the four prerequisites to temporary injunctive relief is generally the most important," but the "necessary level or degree of possibility of success on the merits will vary according to the court's assessment of the other factors." *Id.* at 1232. "A substantial likelihood of success on the merits requires a showing of only *likely* or probable, rather than *certain*, success." *Id.* "Where the balance of the equities weighs heavily in favor of granting the" injunctive relief, "the movant need only show a substantial case on the merits." *See id.* (quotation marks omitted). Similarly, if a movant "is unable to show a substantial likelihood of success on the merits," courts "need not consider the other requirements." *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011); *see also Pittman v. Cole*, 267 F.3d 1269, 1292 (11th Cir. 2001). That is because "[i]f there is no substantial likelihood of success on the merits, no injunction may be issued." *See In re Gateway Radiology Consultants, P.A.*, 983 F.3d 1239, 1254 (11th Cir. 2020). "And obviously, if a claim is meritorious, there is even more than a substantial likelihood of success on the merits; if a claim is not meritorious, there is no likelihood of success on the merits." *Id.* at 1255.

III. DISCUSSION

Although it would typically analyze the Habeas Petition and the TRO Motion separately, the Court finds that the best approach in this case is to analyze them together because, as will be explained, both can be resolved on the same basis. Before the Court can address the merits of

Petitioner's due process and other challenges to his detention, it must first ensure that it has subject-matter jurisdiction to do so. *See, e.g.*, *Univ. of S. Alabama*, 168 F.3d at 409–10. The Court finds that it does not have subject-matter jurisdiction here.

As already explained, Petitioner is being detained under § 1226(a). *See* ECF No. [16] at 1. Another subsection of that same statute, § 1226(b), explicitly allows Respondents to release an alien detained under § 1226(a) on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(2); *Jennings*, 583 U.S. at 306. But nothing in § 1226 requires Respondents to release an alien, *see generally id.* § 1226, and a third subsection of that statute, § 1226(e), explicitly prohibits courts from reviewing any "discretionary judgment regarding the application of" § 1226, *see id.* § 1226(e) (noting those decisions "shall not be subject to review"). The language of § 1226(e) could not be clearer: "No court may set aside *any action or decision* by the Attorney General under this section *regarding the detention of any alien or the revocation or denial of bond or parole*." *See id.* (emphasis added); *Velasquez Velasquez*, 524 F.3d at 1252.

Although Petitioner is correct that § 1226(e) does not preclude habeas petitions generally or challenges to the statutory framework or constitutionality of § 1226 specifically, *see Jennings*, 583 U.S. at 295–96; *Demore*, 538 U.S. at 516–17, those are not the sort of challenges Petitioner advances here. Indeed, Petitioner bases the Habeas Petition on his "targeted detention," which he argues violates the Fifth Amendment, the INA, and international law because it is arbitrary, statutorily unreasonable, and unlawful given his lack of criminal record and history of cooperation with the United States government, among other things. *See* ECF No. [1] at 4. Those arguments are particular to Petitioner, his characteristics, and his circumstances; they are not arguments attacking Respondents' "detention authority under" § 1226(a) or the constitutionality of § 1226 "as a whole." *See Jennings*, 583 U.S. at 295–96. Petitioner himself acknowledges this in the

Reply when he notes the "instant petition only seeks review of the IJ's bond determination." *See* ECF No. [14] at 6. For that reason, and as other courts in this District have found in similar situations, Petitioner is challenging a "discretionary judgment of the Attorney General under § 1226(a)." *See, e.g.*, *Mayorga*, 2024 WL 4298815, at *4–6 (rejecting a similar challenge because "*Jennings* clearly distinguished the issues raised by Petitioner, and is therefore, unavailing").

The same is true of the TRO Motion. In it, Petitioner argues "the conditions of his detention" put him "in grave danger and require immediate attention" and are "unconstitutionally punitive." *See* ECF No. [10] at 1–3. He argues the "government has no legitimate interest in detaining" him, "an individual who is neither a flight risk nor a danger to the community," in "extremely dangerous conditions" because he "poses no threat." *See* ECF No. [10] at 4. And he argues that due process "is implicated when the state actor's conduct in such a case is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience," which he implies Respondents' actions here do. *See* ECF No. [10] at 3. As those arguments make clear, Petitioner is not advancing the kind of overarching challenge to Respondents' detention authority or to the constitutionality of § 1226 courts have jurisdiction to consider. *See Jennings*, 583 U.S. at 295–96; ECF No. [14] at 6. So Petitioner is challenging a discretionary judgment of the Attorney General under § 1226(a) in the TRO Motion as well. *See, e.g.*, *Mayorga*, 2024 WL 4298815, at *4–6.

Having established the precise issues Petitioner is raising, as the Court must, *see DeRoy*, 963 F.3d at 1311 (noting the "facts and substance" alleged, "not the jurisdictional labels attached," "ultimately determine whether a court can hear a claim"); *Dos Santos*, 2020 WL 6565212, at *3–4 (applying that principle to a § 2241 habeas petition challenging detention under § 1226(a)), the answer to the jurisdictional question is apparent. Decisions under § 1226(a) about whether to detain an alien or to release him on bond or parole are entirely within the discretion of the Attorney

General and her delegees, *see Patel*, 971 F.3d at 1266–67 & n.7, and the Court cannot review them, *see* 8 U.S.C. § 1226(e); *cf. Velasquez Velasquez*, 524 F.3d at 1252 (11th Cir. 2008).[4] In reaching this conclusion, the undersigned joins many of her colleagues throughout this Circuit. *See, e.g.*, *Mayorga*, 2024 WL 4298815, at *9; *Dos Santos*, 2020 WL 6565212, at *3; *Aham v. Gartland*, No. 19-CV-46, 2020 WL 806929, at *3 (S.D. Ga. Jan. 29, 2020), *R. & R. adopted*, No. 19-CV-46, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020); *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1350 (M.D. Ga. 2020); *Hernandez v. Warden, Etowah Cnty. Det. Ctr.*, No. 19-C—00746-LS—SGC, 2020 WL 5172423, at *3 (N.D. Ala. July 24, 2020), *R. & R. adopted*, No. 19-C—00746-LS—SGC, 2020 WL 5110761 (N.D. Ala. Aug. 31, 2020).

One final consideration: Petitioner makes brief mention in the Habeas Petition of his "targeted detention" being "a violation of his due process right to a fair bond hearing." *See* ECF No. [1] at 4. Read liberally, that reference to the lack of a fair hearing may be Petitioner's attempt to assert a challenge to the constitutionality of the procedures employed to reach the detention decision in his case. But one passing reference to the possible procedural unfairness of the bond hearing itself is not enough to raise that issue squarely for the Court's consideration, *see, e.g.*, *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority."), especially when Petitioner has not included in the Habeas Petition, the TRO Motion, or the Reply any details about how the bond hearing was unfair, *see generally* ECF No. [1]; ECF No. [10]; ECF No. [14].

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[4] While the Court focuses on the jurisdiction-stripping properties of § 1226(e), it notes that the same result flows from § 1252(a)(2) and, read broadly, § 1252(g). *See* ECF No. [13] at 5–10; *Dos Santos*, 2020 WL 6565212, at *3–4; *Mayorga*, 2024 WL 4298815, at *8–9 & n.9.

Throughout those filings, Petitioner's arguments center on his beliefs about the reason for his detention (to silence him at the request of and for the benefit of the current Ecuadorian government, *see* ECF No. [1] at 2; ECF No. [10] at 2) and the purpose of his conditions of confinement (to encourage him to give up his asylum application and agree to voluntary deportation to Ecuador, *see* ECF No. [10] at 2). Those allegations, if true, are certainly troubling. But even so, Petitioner does not explain how his three separate bond hearings were unfair.[5]

Accordingly, the Court concludes it does not have subject-matter jurisdiction to review the Habeas Petition or the TRO Motion because both filings challenge a discretionary judgment of the Attorney General under § 1226(a), and § 1226(e) explicitly prohibits judicial review of those judgments. *See, e.g.*, *Mayorga*, 2024 WL 4298815, at *4–6; *cf. Velasquez Velasquez*, 524 F.3d at 1252. Following from that conclusion, I respectfully **RECOMMEND** that the Habeas Petition, **ECF No. [1]**, and the TRO Motion, **ECF No. [10]**, be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.[6] *See Mayorga*, 2024 WL 4298815, at 9 (dismissing habeas petition without prejudice after concluding the court was without jurisdiction to consider it); *but see Dos Santos*, 2020 WL 6565212, at *4 (denying petition after concluding the court was without jurisdiction to consider it).

As to the TRO Motion, the Court alternatively concludes that, because it does not have

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[5] The closest Petitioner comes to addressing this issue is when he notes that in one of his bond hearings the IJ asked only a single question about whether "any charges had yet been placed against" him in Ecuador. *See* ECF No. [10] at 3. Petitioner, however, does not elaborate on what significance, if any, this question has to the issues raised in his Petition or TRO Motion.

[6] The Court notes Petitioner has other avenues he can pursue to get the relief he seeks, including requesting a bond redetermination with an IJ if he believes his circumstances have changed materially since his last bond determination, *see* 8 C.F.R. § 1003.19(a), (e), and appealing the IJ's bond decision to the BIA, *see id.* § 1003.19(f).

jurisdiction over the Habeas Petition and, therefore, cannot grant it, Petitioner cannot show a substantial likelihood of success on the merits. *See In re Gateway*, 983 F.3d at 1255 ("[I]f a claim is not meritorious, there is no likelihood of success on the merits."). For that reason, the Court need not consider the other requirements of a TRO, *see Bloedorn*, 631 F.3d at 1229; *Pittman*, 267 F.3d at 1292, because if there is no substantial likelihood of success on the merits, no injunction may be issued, *see In re Gateway*, 983 F.3d at 1254. Accordingly, if the Honorable K. Michael Moore determines that dismissal without prejudice is inappropriate for the TRO Motion, I respectfully **RECOMMEND** that the TRO Motion, **ECF No. [10]**, be **DENIED**. *See Ingram*, 50 F.3d at 900; *Schiavo*, 403 F.3d at 1225–26; *Bloedorn*, 631 F.3d at 1229; *Pittman*, 267 F.3d at 1292; *In re Gateway*, 983 F.3d at 1254–55.

IV. CONCLUSION

For the reasons explained above, I respectfully **RECOMMEND** that:

1. The Habeas Petition, **ECF No. [1]**, be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction;
2. The TRO Motion, **ECF No. [10]**, be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction or, alternatively, **DENIED**.
3. Charles Parra, in his official capacity as the Assistant Director of ICE's Miami Field Office and immediate custodian of Petitioner, be **SUBSTITUTED** as Respondent. *See, e.g.*, *Masingene*, 424 F. Supp. 3d at 1302–03; *Mayorga*, 2024 WL 4298815, at *3.
4. The Clerk of Court be **DIRECTED** to **CLOSE** this case.

The Parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable K. Michael Moore, United States District Judge. Failure to timely file objections shall bar the

Parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the Parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1.

RESPECTFULLY SUBMITTED in Chambers in Miami, Florida on October 29, 2025.

MARTY FULGUEIRA ELFENBEIN
UNITED STATES MAGISTRATE JUDGE

cc: All Counsel of Record