UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERTO ANTONIO CABRERA MARTINEZ,

Petitioner,

v. 25-CV-01110-LJV

TAMMY MARICH, Field Office Director of Buffalo Field Office of Immigration and Customs Enforcement, et al.,

Respondents.[1]

MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION FOR A PRELIMINARY INJUNCTION AND IN SUPPORT OF THE MOTION TO DISMISS

[1] Tammy Marich is the Field Office Director for the Buffalo Field Office. She is substituted in place of Stephen Kurzdorfer automatically pursuant to Federal Rule of Civil Procedure 25(d).

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Petitioner Roberto Antonio Cabrera Martinez is an arriving alien who was paroled into the United States upon applying for asylum in 2023. ECF No. 7 at pg. 2. As Martinez acknowledges, his parole period was supposed to last two years and then he would be placed in removal proceedings upon its expiration. *Id.* at pgs. 2-3. Despite these facts, Martinez now argues that his re-detention is "unexplained" and violates his rights to due process. *Id.* at pg. 3. Because Martinez is an arriving alien with no legal right to remain in the United States, nor even at liberty within the United States upon the expiration of his parole, the motion for a preliminary injunction should be denied and the Petition dismissed in its entirety.

BACKGROUND FACTS[2]

Martinez is a citizen of Nicaragua who sought asylum in the United States in 2023. ECF No. 1 at ¶¶ 1-2. Upon his presenting at the border, he was granted parole for a period of 2 years, ending March 3, 2025. *Id.* at ¶ 2. The parole program under which Martinez entered the United States explicitly stated that parole would be for a two year period, after which removal proceedings would be initiated against Martinez. ECF No. 7 at pgs. 2-3.

More than six months after his parole had expired—with no further action taken by Martinez to extend it or seek lawful status—he was arrested by immigration officers on October 25, 2025. ECF No. 1 at ¶ 5.

Immigration removal proceedings were commenced against Martinez and he has a master hearing scheduled for November 19, 2025 before immigration judge Brian Counihan.[3]

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[2] Given the expedited briefing schedule for this matter, the facts here are taken from the Petition and the truth of such facts is not admitted.

ARGUMENT

I. THE MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED BECAUSE MARTINEZ HAS NOT ESTABLISHED HIS ENTITLEMENT TO RELIEF

A. Martinez Has Not Established A Likelihood Of Success On The Merits

Martinez is without a doubt an arriving alien. *See* 8 C.F.R. § 1.2. His parole into the United States does not change that designation. *Id.* Arriving aliens must be detained under the Immigration and Nationality Act, 8 U.S.C. §§ 1225(b)(1)(B)(iii)(IV); 1225(b)(2)(A). The only mechanism of release for an arriving alien is parole under 8 U.S.C. § 1182(d)(5)(A).

In *Department of Homeland Security v. Thuraissigiam*, the Supreme Court acknowledged the sovereign prerogative of deciding whether to admit or exclude an alien, the government's plenary authority to determine which aliens to admit, and the power to set the procedures to be followed in determining whether an alien should be admitted. 591 U.S. 130, 139 (2020). The *Thuraissigiam* Court quoted with approval its prior holding in *U.S. ex rel. Knauff v. Shaughnessy*: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." 338 U.S. 537, 544 (1950); *Thuraissigiam*, 591 U.S. at 139. The Court additionally defined the limited due process rights enjoyed by arriving aliens: "the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the

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[3] This information was obtained through the Executive Office of Immigration Review's Automated Case Information system using Martinez's alien number and country of citizenship. Such information is not provided here to protect his privacy, but can be provided to the Court in camera to verify the information. This Court can, as other courts have, take judicial notice of the EOIR Automated Case Information System as public information on a government-operated website. *See, e.g., Mackey v. Att'y Gen. for United States,* No. 1:25-CV-01943 (UNA), 2025 WL 2429864, at *1 n.1 (D.D.C. Aug. 21, 2025); *Onebunne v. Warden, F.C.I. Mendota,* No. 1:25-CV-00103-KES-SKO (HC), 2025 WL 789364, at *2 n.1 (E.D. Cal. Feb. 18, 2025); *Elyardo v. Lechleitner*, No. 1:23-CV-01089, 2023 WL 8259252, at *1 (M.D. Pa. Nov. 29, 2023).

threshold of initial entry . . . has no entitlement to procedural rights other than those afforded by statute." *Thuraissigiam*, 591 U.S. at 107 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). Indeed, in *Nishimura* the Court held that for arriving aliens, "the decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law." *Nishimura Ekiu,* 142 U.S. 651. Thus, due process in this case being only what is afforded by statute, Martinez lacks any right to be at his liberty, or to have prior notice or an opportunity to be heard regarding his arrest and detention after his parole expired. His substantive arguments fail, and thus, he cannot show a likelihood of success on the merits of his claims. This is fatal to his motion for a preliminary injunction.

Martinez relies heavily on this Court's decision in *Mata Velasquez v. Kurzdorfer*, which involved an alien whose parole was terminated, unlike Martinez whose parole expired months before his arrest. No. 25-CV-493-LJV, 2025 WL 1953796 (W.D.N.Y. July 16, 2025). Although Martinez argues that the expiration of his parole is "ultimately a distinction without a difference", ECF No. 7 at pg. 4, this could not be further from the truth. Just as a driver whose license has expired, the expiration of Martinez's parole deprives him of his eligibility to do something—in his case, be at liberty in the United States. Indeed, this Court noted in *Velasquez*: "The narrow—but weighty—question before the Court is this: what process is Mata Velasquez due before DHS can do an about-face, terminate his parole, and keep him in custody pending his deportation?" 2025 WL 1953796, at *1. Here, *Velasquez* is totally inapplicable because DHS did not perform any "about-face". Martinez *knew* his parole would last two years; he *knew* it expired in March 2025; and he *knew* he could be placed in removal proceedings once his parole expired. He admits as much. ECF No. 7 at pgs. 2-3. There is no legal requirement that DHS notify an alien when his or her parole

expires, 8 C.F.R. § 212.5(e)(1), much less provide the prior notice, showing of changed circumstances, or opportunity to respond that Martinez now seeks. ECF No. 7 at pg. 5. Indeed, his reliance on *Velasquez* fails entirely because in this case there is no "moving of the goalposts" that concerned this Court previously; the goalposts have remained where they are, and Martinez was told where they were and what would happen afterwards. This case is wholly without merit and thus the motion for a preliminary injunction should be denied.

B. Martinez Has Not Shown He Would Suffer Irreparable Harm By Detention

Similarly, and also fatal to his motion for a preliminary injunction, Martinez cannot show irreparable harm due to his detention in immigration custody. This is what Congress requires. *See* 8 U.S.C. § 1225(b). Although Martinez enjoyed discretionary parole under 8 U.S.C. § 1182(d)(5)(A), the ordinary course of immigration proceedings for aliens detained under § 1225(b) is to be detained.[4] Indeed, he was advised that once his parole expired he may be placed in removal proceedings. ECF No. 7 at pgs. 2-3. Thus, he cannot show that he is suffering irreparable harm through the usual and ordinary course of detention proceedings.

Petitioner addresses his claim of irreparable harm in roughly one page of argument, relying exclusively on cases outside of this District. ECF No. 7 at pgs. 5-6. None of the cases cited or quoted or otherwise relied upon appear to involve an arriving alien like Martinez here, and thus none of the cases cited involve an alien whose detention was

[4] As a reminder, Petitioner was paroled into the United States under 8 U.S.C. § 1182(d)(5)(A), but that parole was revoked and otherwise terminated by Field Office Director Steven Kurzdorfer pursuant to his authority under 8 C.F.R. § 212.5(e)(2)(i), and through the operation of 8 C.F.R. § 235.3(b)(6) when the expedited order of removal was issued. Amend. Pet., ECF No. 21, at ¶ 47.

mandated by statute and who enjoyed the most limited rights as an alien on the cusp of entry.[5] Martinez also argues that he will be harmed due to his deprivation of liberty but fails to realize that his purported deprivation of liberty is a part of the immigration process for arriving aliens without authorization to enter the United States. *See* 8 U.S.C. § 1225(b). While some courts have found an irreparable harm to result from detention, this has usually been the result of an argument that ICE is applying the wrong detention standard. For example, an alien arguing that they should be subject to 8 U.S.C. § 1226(a) instead of § 1225(b) is thus arguing that they should be eligible for release and bond under § 1226(a), as opposed to the mandatory detention contemplated in § 1225(b). *See, e.g., Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1655483, at *2 (W.D. Wash. May 19, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025). In sum, the irreparable harm in such cases results from the application of the wrong detention statute, subjecting the alien to mandatory detention under the wrong statute when the correct statute allows for a bond hearing. But Martinez can make no such argument here—he is subject to § 1225(b) and mandatory detention. He cannot argue otherwise. Because Martinez must prove all four elements required to establish his entitlement to a preliminary injunction, his failure to show an irreparable harm is fatal to his motion, and the request for a preliminary injunction should be denied.

[5] Martinez also refers to the *Q Li* and *Hurtado* decisions, ECF No. 7 at pg. 6, n. 3, but those cases have nothing to do with this case. Martinez is an arriving alien and not entitled to bond at all; those cases related to the application of § 1225(b)(2) to "applicants for admission" not arriving aliens.

C. The Balance Of Equities And Concerns Of Public Interest Weigh Against The Grant Of A Preliminary Injunction

The final two factors—considered jointly where the government is a party—look to the equities involved and the public interest in the issuance of an injunction. Here, both factors weigh against granting the injunction requested.

In terms of the balance of equities and public interest, Martinez's claimed interest is liberty, but he has no right to it as an arriving alien seeking entry into this country. His interest should therefore be considered minimal. The government has an interest in pursuing immigration policies it chooses. *New York v. United States Dep't of Homeland Sec.*, 969 F.3d 42, 87 (2d Cir. 2020). Likewise, public interest lies in favor of enforcing immigration laws. *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 469 (S.D.N.Y. 2018). Thus, the third and fourth factors weigh in favor of the motion for an injunction being denied.

An injunction in this case would do manifest harm to the federal government's ability to rely on its congressionally authorized arrest authority to fulfill its statutory mission of enforcing immigration law and removing unlawfully present aliens from the United States. Often, an immigration arrest is necessary to serve the alien with a Notice to Appear before the immigration court and initiate the removal process or effectuate an immigration judge's final order of removal. *See* 8 U.S.C. § 1229; 8 C.F.R. § 236.1(b)(1), § 1003.14. A prohibition on ICE arrests and detention would thus impede the functioning of the immigration system. Accordingly, the motion for an injunction should be denied.

II. THE PETITION SHOULD BE DISMISSED IN ITS ENTIRETY BECAUSE MARTINEZ IS AN ARRIVING ALIEN WHOSE PAROLE EXPIRED, AND HIS DETENTION IS MANDATED BY STATUTE

As discussed above, Martinez is an arriving alien with only the most limited of rights. As the Supreme Court noted, Martinez is not entitled to any additional due process rights other than what is provided by statute. *Thuraissigiam*, 591 U.S. at 107. Statute provides for his mandatory detention. There are no statutory requirements that once his parole expires he be given notice or an opportunity to be heard prior to his arrest. Indeed, arrest and detention are what the statutes explicitly require. Accordingly, the Petition should be dismissed in its entirety.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court deny the Petitioner's motion for a preliminary injunction and dismiss this Petition in its entirety.

Respectfully submitted,

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