IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CRISTIN ROXANA AMAYA CORNEJO,

Petitioner,

v.

KRISTI NOEM, SECRETARY UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*

Respondents.

Case No. 8:25-cv-03670-LKG

OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER REGARDING DETENTION PENDING REMOVAL PROCEEDINGS

Respondents, by and through counsel, Kelly O. Hayes, United States Attorney for the District of Maryland, S. Nicole Nardone, Assistant United States Attorney for said District, hereby respond to the Motion for Temporary Restraining Order ("TRO") filed by Petitioner on November 7, 2025 (ECF No. 3), as directed by the Scheduling Order issued by the Court on November 10, 2025 (ECF No. 9).

I. INTRODUCTION

On November 7, 2025, Petitioner Cristin Roxana Amaya Cornejo ("Petitioner" or "Amaya Cornejo") filed an Emergency Petition for Writ of Habeas Corpus (ECF No. 1) and Emergency Motion for Temporary Restraining Order (ECF No. 3) seeking an order restraining Respondents from removing her from the state of Maryland and from the United States. To start, Petitioner's request to restrain her removal from Maryland is moot as Petitioner has already been relocated to a facility in Louisiana. Nonetheless, to grant Petitioner's request for release, this Court would have to engage in a process which, by statute, falls under the exclusive authority of an Immigration Judge once removal proceedings have been initiated.

Ultimately, Petitioner has failed to establish that she merits the "extraordinary relief" of a temporary restraining order where she has failed to show that she is likely to succeed on the merits of her Petition as her detention pursuant to 8 U.S.C. § 1226(a) is plainly warranted. Moreover, there is no merit to Petitioner's claim that she will suffer irreparable harm if this Court does not grant her immediate relief considering that under 8 U.S.C. § 1226(a) she is eligible to immediately seek a bond hearing before an immigration judge. Despite the availability of this relief, there is no indication that Petitioner's counsel has taken any action to request a custody redetermination or a bond hearing in this matter.

II. PROCEDURAL HISTORY

On November 4, 2025, Amaya Cornejo was served with notice that she was being placed in removal proceedings under section 240 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a (Exhibit ("Exh.") A, Notice to Appear In Removal Proceedings Under Section 240 of the Immigration and Nationality Act, ("Form I-862")). The Notice to Appear ("NTA") is a charging document that instructs an alien to appear before an immigration judge and is the first step of removal proceedings. The NTA provided Petitioner with the following notice: "[y]ou are an alien present in the United States who has not been admitted or paroled" and "[t]he Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;

2. You are a native of EL SALVADOR and a citizen of EL SALVADOR;

3. You were admitted to the United States at or near DULLES, VA, on or about March 29, 2007, as a nonimmigrant Visitor for Pleasure with authorization to remain in the United States for a temporary period not to exceed June 28, 2007.

4. You remained in the United States beyond June 28, 2007, without authorization from the Immigration and Naturalization Service or its successor the Department of Homeland Security.

> On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
>
> Section 237(a)(1)(B) of the Immigration and Nationality Act, as amended, in that, after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.

See Exh. A. The NTA also ordered Petitioner to appear before an immigration judge in Hyattsville, Maryland, on November 21, 2025 at 8:00 a.m. "to show why you should not be removed from the United States based on the charge(s) set forth above." *Id.*

On November 7, 2025, Petitioner filed an Emergency Petition for Writ of Habeas Corpus (ECF No. 1) and Emergency Motion for Temporary Restraining Order (ECF No. 3). Within hours the Court entered it's Amended Standing Order No. 2025-01, Concerning Petitions for Writs of Habeas Corpus-Alien Detainees, temporarily staying Petitioner's removal from the United States. (ECF No. 2). Government counsel was then notified of the case, and the Court set a status conference on November 10, 2025 at 3:30 p.m. (ECF No. 6).

During the status conference, counsel for the government informed the Court that Petitioner had been transferred to the Richwood Correctional Center in Monroe, Louisiana on November 7, 2025, where she is currently detained. *See* Exh. B (ICE Detainee Locator, 11/13/2025). Petitioner was relocated as she could not been detained beyond twenty-four hours at the Baltimore Field Office which is not a detention center and is equipped only for short-term holding.[1] Following the status conference, the Court issued a Scheduling Order directing Respondent to file a response to Petitioner's Motion for a Temporary Restraining Order on or before November 13, 2025. (ECF

[1] As this Court is aware, there are no ICE detention facilities in Maryland. Maryland State and Local facilities are prohibited from housing ICE detainees. Detention Not Dignity Act, H.B. 16, 2021 Leg., 443rd Sess. (Md. 2021) (prohibiting governmental entities from entering into agreements which would provide facilities to be used to house immigration–related detainees).

No. 9). On November 10, 2025, the Department of Homeland Security ("DHS") moved to change the venue of Petitioner's immigration judge hearing, to ensure that Petitioner's hearing was timely rescheduled in Louisiana where Petitioner is now located. *See* Exhibit C (DHS Motion to Change Venue).

III. LEGAL STANDARDS

Before a court may rule on the merits of a claim, it must first determine if "it has the jurisdiction over the category of claim in suit (subject [] matter jurisdiction)." *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-102 (1998)). The burden of proving subject matter jurisdiction rests with the plaintiff. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999). In determining whether subject matter jurisdiction exists "as a threshold matter," a court "may consider evidence outside the pleadings. *Evans*, 166 F.3d at 647; *see also Williams v. United States*, 50 F.3d 299, 304 (4th Cir. 1995)

Like a preliminary injunction, a temporary restraining order ("TRO") is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief' and may never be awarded 'as of right.'" *Mountain Valley Pipeline, LLC v. W. Pocahontas Properties Ltd. P'ship*, 918 F.3d 353, 366 (4th Cir. 2019) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008) ("*Winter Factors*"). As such, a party "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Roe v. Dep't of Def.*, 947 F.3d 207, 219 (4th Cir. 2020), *as amended* (Jan. 14, 2020) (citation omitted). Petitioner has failed to establish her entitlement to a TRO in this matter.

IV. ARGUMENT

A. Petitioner Will Not Likely Succeed On The Merits Of Her Claims

Through her Petition and Motion for TRO, Petitioner seeks to block her removal from Maryland, to be released from detention and to stay her removal from the United States. Petitioner has failed to demonstrate that she will likely succeed on these claims.

1. The Court Lacks Jurisdiction To Review Petitioner's Detention Pending Her Removal Proceedings, To Relocate Her Or Release Her

To start, to succeed on her claims, Petitioner must establish this Court's jurisdiction. It is well established that once an individual is in removal proceedings under 8 U.S.C. § 1229a, a proceeding before an immigration judge "shall be the sole and exclusive procedure" for determining "whether an alien may be removed from the United States." That applies to the decision to place a responded in removal proceedings, and the custody decision. Under 8 U.S.C. § 1252(b)(9), the decision to detain the Petitioner here is not subject to judicial review: "questions of law and fact, including interpretation and application of constitutional and statutory provisions arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." *See El Gamal v. Noem*, No. SA-25-CV-00664-OLG, 2025 WL 1857593, at *5 (W.D. Tex. July 2, 2025) (because Petitioners are challenging the decision to detain them in the first place, § 1252(b)(9) functions as a jurisdictional bar to judicial review) citing *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018); see also *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020) ("If ... the alien is ordered removed, the alien can appeal the removal order to [BIA] and, if that appeal is unsuccessful, the alien is generally entitled to review in a federal court of appeals.").

Further, the location of Petitioner's detention is delegated to the Attorney General who must "arrange for appropriate places of detention for aliens detained pending removal." 8 U.S.C. § 1231(g)(1)). The Attorney General's discretionary power to transfer aliens from one locale to another, as [he or] she deems appropriate, arises from this language." *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (holding that § 1252(f) forecloses jurisdiction over the Attorney General's power to transfer aliens to appropriate facilities, including attempts to do so through the request for relief in a Bivens action).

Other Courts have reached similar conclusions in actions seeking review of decisions made during removal proceedings. See *Calla-Collado v. Att'y Gen.*, 663 F.3d 680, 685 (3d Cir. 2011) (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"); *Gandarillas–Zambrana v. Bd. of Immigration Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995) (INS necessarily has the authority to determine the location of detention of an alien in deportation proceedings under 8 U.S.C. § 1252(c), and therefore, to transfer aliens from one detention center to another; "there is nothing inherently irregular, not to say unconstitutional, about the transfer from Virginia to Louisiana.") Indeed, because the location of Petitioner's detention is within sound discretion of Attorney General under 8 U.S.C. § 1252(c), Petitioner cannot establish a likelihood that her detention location challenge would succeed. *Sasso v. Milhollan*, 735 F. Supp. 1045, 1048-49 (S.D. Fla. 1990)

2. Even If The Court Were To Find Jurisdiction, It Should Find That Petitioner Was Properly Detained Under 8 U.S.C. § 1226(a) Pending Her Removal Proceedings And Will Be Afforded Due Process

Even if the Court were to find jurisdiction over this matter, it should find that Petitioner was properly detained under 8 U.S.C. § 1226(a) pending her removal proceedings and that she will be afforded due process.

a. Petitioner Was Properly Detained under 1226(a) Pending Her Removal Proceedings

Removal proceedings commence once the NTA has been issued, served upon an individual, and filed with the Immigration Court. *See* 8 U.S.C. § 1229(a). All three of these events occurred on November 4, 2025, on the date Petitioner was taken into custody. *See* Exh. A. The NTA provides that Petitioner was charged with removability under Immigration and Nationality Act ("INA") § 237(a)(1)(B), 8 U.S.C. § 1227 (a)(1)(B), in that, after having being admitted as a nonimmigrant under Section 101(a)(15)(visitor for pleasure) on or about March 29, 2007, for a temporary period not to exceed June 28, 2007, she remained in the United States for a time longer than permitted, without authorization. *Id.*

Petitioner was then properly detained following the initiation of her removal proceedings pursuant to 8 U.S.C. § 1226(a). As the Fourth Circuit has observed, "[t]he Immigration and Nationality Act permits detention of aliens pending the outcome of removal proceedings." *Miranda v. Garland*, 34 F.4th 338, 346 (4th Cir. 2022), *citing* 8 U.S.C. § 1226, *Jennings v. Rodriguez*, —— U.S. ——, 138 S. Ct. 830, 837 (2018). Relevant here, 8 U.S.C. § 1226 authorizes detention of any individual in removal proceedings and requires detention in some cases. *Compare* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.") *with id.* § 1226(c) ("The Attorney General shall take into custody any alien who" falls into any of four

categories). As the Supreme Court held in *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018), 8 U.S.C. § 1226(a) is the "'default rule' which governs the detention of 'aliens already in the country' who are subject to removal proceedings." *Singh v. Lyons*, No. 1:25-CV-01606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025). *See e.g. Maldonado v. Baker*, No. CV 25-3084-TDC, 2025 WL 2968042, at *5 (D. Md. Oct. 21, 2025) (concluding that Petitioner, who had entered the United States over ten years ago without admission and had no criminal history, was properly detained under the default provision of 8 U.S.C. § 1226(a) as he was "'arrested and detained' pending a decision on whether he [was] to be removed from the United States.")

b. The Fourth Circuit Has Found That Detention Under 1226(a) Comports With Due Process As Petitioner Will Be Provided Ample Opportunity To Seek Release From Detention

The Fourth Circuit has concluded that detention procedures under 8 U.S.C. § 1226(a) satisfy due process as Petitioner will be provided an opportunity to seek release from detention. As this Court has observed, a non-citizen subject to detention under 8 U.S.C. § 1226(a) is "entitled to three opportunities to seek release from detention" -- which is one of the reasons "the Fourth Circuit has found that this regime, if properly followed, comports with due process." *Maldonado*, 2025 WL 2968042, at *10, citing *Miranda v. Garland*, 34 F.4th 362, 366 (4th Cir. 2022). The first opportunity comes when, "[a]n immigration officer is authorized to release the alien if the officer is satisfied that the alien is not a danger to the community or a flight risk," at which point the officer "may set a bond or place conditions on the alien's release." *Maldonado*, 2025 WL 2968042, at *10; citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). If the noncitizen is not satisfied with the immigration officer's determination, that individual may appeal it to an immigration judge and have it addressed at a bond hearing. *Id.*, citing *Miranda,* 34 F.4th at 346 and 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). Finally, such a noncitizen may appeal the immigration judge's decision

to the BIA." *Id.* citing *Miranda*, 34 F.4th at 346-47 and 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1236.1(d)(3).

Consistent with the reasoning of the Fourth Circuit in *Miranda*, several judges in this Court have recently summarily dismissed emergency motions for temporary restraining orders and habeas petitions in cases brought on behalf of petitioners similarly held under the discretionary detention provision in 8 U.S.C. § 1226(a). *See e.g. Chavez De Vasquez v. Noem*, et al., 8:25-cv-03657-SAG (Nov. 7, 2025) (denying motion without prejudice based on finding that petitioner was entitled to a seek a bond hearing and her detention was discretionary pursuant to 8 U.S.C. § 1226(a)); *Gustavo Garcia Vigil v. Noem, et al.*, 1:25-cv-03329-JRR (Nov. 4, 2025) (denying habeas petition "in view of Respondent's express statement that Petitioner is entitled to seek a bond hearing and that his detention is discretionary pursuant to 8 8 U.S.C. § 1226(a).")

As Petitioner here is properly held in discretionary detention under 8 U.S.C. § 1226(a) and will have the opportunity to secure her release before the immigration judge, she cannot establish the likelihood of success on the merits of her claims.

B. Considering The Foregoing And The Current Status Of This Case, The Remaining *Winter* Factors Tip In Favor Of The Denial Of Relief

In light of the forgoing and the current status of this case, the remaining *Winter* factors weight against granting preliminary relief.

As noted *supra*, the record establishes that Petitioner is currently detained in Louisiana and DHS has already moved to change venue to allow the prompt rescheduling of Petitioner's immigration judge hearing in her current location. *See* Ex. B. Based on these facts, and Petitioner's eligibility to immediately seek a bond for her release with the immigration judge – which the Fourth Circuit has expressly found comports with due process -- Petitioner's claim that she will suffer irreparable harm absent relief from this Court is without merit. Indeed, in recent

cases where this court has found that petitioners were properly detained under 8 U.S.C. § 1226(a) (discretionary detention), rather than 8 U.S.C. § 1225(b) (mandatory detention), they have ordered that petitioners receive bond hearings required pursuant to § 1226(a) rather than merely ordering their release, as Petitioner requests here. *See e.g. Maldonado v. Baker*, No. CV 25-3084-TDC, 2025 WL 2968042, at *5 (D. Md. Oct. 21, 2025); *Mario Pineda Velazquez, v. Noem*, et al., No. CV GLR-25-3215, 2025 WL 3003684, ECF. 24 (D. Md. Oct. 27, 2025). For the foregoing reasons, considerations of the balance of equities and the public interest also weigh against granting preliminary relief here.

V. CONCLUSION

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

Dated: November 13, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November 2025, a copy of the foregoing Supplemental Notice was served electronically on all parties and counsel receiving service via CM/ECF in this case.

/s/ S. Nicole Nardone
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Assistant United States Attorney