

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SALVADOR RAYMUNDO MATEO FRANCISCO,

Petitioner,

v.

25-CV-01194-JLS

TAMMY MARICH, in her official capacity as Acting Field
Office Director, Buffalo Field Office, Enforcement and Removal
Operations, U.S. Immigration & Customs Enforcement, et al.,

Respondents.¹

**RESPONDENTS' OPPOSITION TO THE MOTION FOR A TEMPORARY
RESTRAINING ORDER (ECF NO. 8)**

¹ Tammy Marich has replaced Stephen Kurzdorfer and is substituted for him automatically pursuant to Federal Rule of Civil Procedure 25(d).

TABLE OF CONTENTS

BACKGROUND FACTS 1

LEGAL BACKGROUND 2

ARGUMENT 6

 I. THIS COURT SHOULD NOT ORDER FRANCISCO’S IMMEDIATE
 RELEASE..... 6

 II. THIS COURT SHOULD NOT ISSUE AN ORDER ENJOINING
 FRANCISCO’S TRANSFER OR REMOVAL OR REQUIRING
 ADVANCED NOTICE OF THE SAME 7

 III. THIS COURT LACKS JURISDICTION TO HEAR THIS PETITION
 UNDER 8 U.S.C. § 1252 AND THUS THE MOTION FOR A TRO
 SHOULD BE DENIED 8

 A. 8 U.S.C. § 1252(G) Bars Jurisdiction Over Francisco’s Claims 8

 B. 8 U.S.C. § 1252(B)(9) Bars Review Of Francisco’s Claims 10

 IV. FRANCISCO IS NOT ENTITLED TO A TEMPORARY RESTRAINING
 ORDER BECAUSE HE WILL NOT SUFFER IRREPARABLE HARM, IS
 NOT LIKELY TO SUCCEED ON THE MERITS, AND THE BALANCE
 OF EQUITIES DOES NOT TIP IN HIS FAVOR 13

 A. Francisco Is Not Likely To Suffer Irreparable Harm 13

 B. Francisco Is Not Likely To Succeed On The Merits 13

 C. The Balance Of Equities Favor The Government And The
 Enforcement Of Immigration Laws..... 16

 V. FRANCISCO’S FOURTH AMENDMENT RIGHTS WERE NOT
 VIOLATED 17

 VI. FRANCISCO SHOULD BE REQUIRED TO POST A BOND IF ANY
 INJUNCTION IS ORDERED..... 17

CONCLUSION 18

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>Aguilar v. ICE</i> , 510 F.3d 1 (1st Cir. 2007).....	11
<i>Ajlani v. Chertoff</i> , 545 F.3d 229 (2d Cir. 2008).....	11
<i>Alvarez v. ICE</i> , 818 F.3d 1194 (11th Cir. 2016)	8
<i>Biden v. Texas</i> , 597 U.S. 785 (2022).....	3
<i>Charette v. Town of Oyster Bay</i> , 159 F.3d 749 (2d Cir. 1998).....	5
<i>CJ Prod. LLC v. Snuggly Plushez LLC</i> , 809 F. Supp. 2d 127 (E.D.N.Y. 2011)	5
<i>Delgado v. Quarantillo</i> , 643 F.3d 52 (2d Cir. 2011).....	11
<i>Demore v. Kim</i> , 538 U.S. 510 (2003).....	7, 13
<i>Dep't of Homeland Sec. v. Thuraissigiam</i> , 591 U.S. 103 (2020).....	3, 14
<i>Diop v. ICE/Homeland Sec.</i> , 656 F.3d 221 (3d Cir. 2011).....	7
<i>Dzhabrailov v. Decker</i> , 2020 U.S. Dist. LEXIS 91892 (S.D.N.Y. May 26, 2020)	6
<i>Funez-Galvez v. Doll</i> , No. 3:CV-17-1931, 2018 WL 487844 (M.D. Pa. Jan. 19, 2018).....	7
<i>Garland v. Aleman Gonzalez</i> , 596 U.S. 543 (2022).....	7
<i>Gonzales Garcia v. Rosen</i> , 513 F. Supp. 3d 329 (W.D.N.Y. 2021)	15

Hernandez-Hernandez v. Feeley,
535 F. Supp. 3d 142 (W.D.N.Y. Apr. 21, 2021)..... 13

Herrera-Correra v. United States,
No. CV 08-2941 DSF (JCx), 2008 WL 11336833 (C.D. Cal. Sept. 11, 2008) 9

In re Guerra,
24 I. & N. Dec. 37 (BIA 2006) 4

J.E.F.M. v. Lynch,
837 F.3d 1026 (9th Cir. 2016) 10, 11

Jennings v. Rodriguez,
583 U.S. 281 (2018)..... passim

Jones v. Wolf,
467 F. Supp. 3d 74 (W.D.N.Y. 2020) 5, 6

Khorrami v. Rolince,
493 F. Supp. 2d 1061 (N.D. Ill. 2007) 9

Lopez v. Barr,
No. CV 20-1330 (JRT/BRT), 2021 WL 195523 (D. Minn. Jan. 20, 2021)..... 10

Maryland v. King,
567 U.S. 1301 16

Matter of Q. Li,
29 I. & N. Dec. 66 (BIA 2025) 3

Matter of Yajure-Hurtado,
29 I&N Dec. 216 (BIA 2025) 14

Mazurek v. Armstrong,
520 U.S. 968 (1997)..... 5

Nasrallah v. Barr,
590 U.S. 573 (2020)..... 10

Noem v. Vasquez Perdomo,
No. 25A169, 2025 WL 2585637 (U.S. Sept. 8, 2025)..... 16, 17

Ortega-Cervantes v. Gonzales,
501 F.3d 1111 (9th Cir. 2007) 4

Ramos v. Att’y Gen. United States,
No. 25-2946, 2025 WL 2950133 (3d Cir. Oct. 17, 2025)..... 2

Register.com, Inc. v. Verio, Inc.,
356 F.3d 393 (2d Cir. 2004)..... 5

Reno v. Am.-Arab Anti-Discrimination Comm.,
("AADC"), 525 U.S. 471 (1999)..... 9, 10

Rodriguez Figueroa v. Garland,
535 F. Supp. 3d 122 (W.D.N.Y. 2021)..... 15

Rosario v. Holder,
627 F.3d 58 (2d Cir. 2010)..... 11

Ruiz v. Mukasey,
552 F.3d 269 (2d Cir. 2009)..... 10

Rush v. Hillside Buffalo, LLC,
314 F. Supp. 3d 477 (W.D.N.Y. 2018)..... 5

Saadulloev v. Garland,
No. 3:23-CV-00106, 2024 WL 1076106 (W.D. Pa. Mar. 12, 2024) 12

Shaikh v. Barr,
No. 20-CV-6300 CJS, 2020 WL 7021443 (W.D.N.Y. Nov. 30, 2020)..... 8

Shaughnessy v. United States ex rel. Mezei,
345 U.S. 206 (1953)..... 3, 15

Sissoko v. Rocha,
509 F.3d 947 (9th Cir. 2007) 9

St. Charles v. Barr,
514 F. Supp. 3d 570 (W.D.N.Y. 2021)..... 15

Tazu v. Att’y Gen. U.S.,
975 F.3d 292 (3d Cir. 2020)..... 9

U.S. ex rel. Knauff v. Shaughnessy,
338 U.S. 537 (1950)..... 15

Valencia-Mejia v. United States,
No. CV 08–2943 CAS (PJWx), 2008 WL 4286979 (C.D. Cal. Sept. 15, 2008)..... 9

Velasco Lopez v. Decker,
978 F.3d 842 (2d Cir. 2020)..... 12, 13

Veramark Techs., Inc. v. Bouk,
10 F. Supp. 3d 395 (W.D.N.Y. 2014)..... 6

Walker v. Searls,
 No. 23-CV-140-LJV, 2024 WL 1735213 (W.D.N.Y. Apr. 23, 2024)..... 8

Wang v. United States,
 No. CV 10-0389 SVW (RCx), 2010 WL 11463156 (C.D. Cal. Aug. 18, 2010)..... 9

Winter v. Nat. Res. Def. Council, Inc.,
 555 U.S. 7 (2008)..... 5, 6

Wong Yang Sung v. McGrath,
 339 U.S. 33 (1950)..... 16

Wright v. Giuliani,
 230 F.3d 543 (2d Cir. 2000)..... 5

Xiao Ji Chen v. U.S. Dep’t of Justice,
 434 F.3d 144 (2d Cir. 2006)..... 10

Statutes

8 U.S.C. § 1182(d)(5)(A)..... 3

8 U.S.C. § 1225..... 2, 14

8 U.S.C. § 1225(b)..... 1, 13

8 U.S.C. § 1225(b)(2) 13

8 U.S.C. § 1225(b)(2)(A)..... 3, 13, 15

8 U.S.C. § 1226..... 4

8 U.S.C. § 1226(a) 4

8 U.S.C. § 1226(a)(1)..... 13

8 U.S.C. § 1231(g)(1) 7, 8

8 U.S.C. § 1252..... 8

8 U.S.C. § 1252(a)(2)(D) 11

8 U.S.C. § 1252(a)(5)..... 10

8 U.S.C. § 1252(B)(9)..... 10, 11, 12

8 U.S.C. § 1252(G) 8

8 U.S.C. § 1357(a)(2)..... 16
U.S.C. § 1225(a)(1)..... 2, 14
U.S.C. § 1226(a) 4

Regulations

8 C.F.R. § 236.1(c)(8)..... 4
8 C.F.R. § 1236.1(d)(1)..... 4
8 C.F.R. §§ 236.1(d)(1)..... 4

Petitioner Salvador Raymundo Mateo Francisco moves for a temporary restraining order (“TRO”) seeking his immediate release or else an order enjoining his transfer outside of the district, or, in the alternative, requiring the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) to provide 72 business hours notice prior to transfer. Because Francisco’s detention is lawful under the Immigration and Nationality Act (“INA”), and he therefore cannot succeed on the underlying merits of his Petition. Pared down to the simplest facts, this Petition involves an arriving alien who has been taken into ICE custody for removal proceedings. His detention is mandated by statute and his procedural due process rights are limited to those that Congress has provided. As such, the TRO should be denied.

BACKGROUND FACTS²

Francisco is a 20-year-old man who came to the United States in 2021 at 15 years of age. ECF No. 7 at ¶ 1. Importantly, he appeared at a Port of Entry and is an arriving alien detained pursuant to 8 U.S.C. § 1225(b). *See* ECF No. 7-2 at pg. 2.

Francisco was initially taken into the custody of the Office of Refugee Resettlement (“ORR”) but later released to the care of his aunt. ECF No. 7 at ¶ 2. He applied for Special Immigrant Juvenile (“SIJ”) status, and, due to that pending application, removal proceedings against him were terminated in 2022. *Id.* at ¶ 3. The SIJ petition was approved in December 2022, putting Francisco on a path towards lawful status, but conferring no immigration status

² Given the expedited briefing schedule, the alien file has not been received by this Office yet. As such, the government cannot provide the typical documents and records that would ordinarily be provided in opposition to a habeas petition. Since the Government cannot verify the allegations at issue, the facts here are taken from the Petition and the truth of the facts is not admitted.

or benefit in itself. *Id.* He was also granted deferred action on his removal due to his SIJ status. *Id.* at ¶ 5. Deferred action is “an act of administrative convenience to the government which gives some cases lower priority for removal from the United States for a specified period of time.” *Ramos v. Att’y Gen. United States*, No. 25-2946, 2025 WL 2950133, at *2 (3d Cir. Oct. 17, 2025).

On November 11, 2025, Francisco was arrested by ICE for the commencement of immigration proceedings seeking his removal from the United States. ECF No. 7 at ¶ 7.

LEGAL BACKGROUND

Detention Under 8 U.S.C. § 1225

Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear

of prosecution, or is “found not to have such a fear,” he is detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); see *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). Still, DHS has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022). Importantly, for aliens who present at the border as opposed to aliens who enter unlawfully without admission or inspection and parole, such aliens are treated as having never gained entry into the United States under the “entry fiction” theory, even if granted parole and present within the borders of the country. See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (“[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’”) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)).

Detention Under 8 U.S.C. § 1226

Section 1226 provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.³ By regulation, immigration officers can release aliens if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the immigration judge may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider). But regardless of the factors immigration judges consider, an alien “who presents a danger to persons or property should not be released during the pendency of removal proceedings.” *Id.* at 38.

³ Being “conditionally paroled under the authority of [8 U.S.C.] § 1226(a)” is distinct from being “paroled into the United States under the authority of [8 U.S.C.] § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under 8 U.S.C. § 1255(a)).

Standard For The Issuance Of A Temporary Restraining Order

The decision of whether to grant or deny a temporary restraining order falls within the Court's sound discretion. *CJ Prod. LLC v. Snuggly Plushez LLC*, 809 F. Supp. 2d 127, 140 (E.D.N.Y. 2011). Because such an order is "an extraordinary remedy" that may only be awarded "upon a clear showing that the plaintiff is entitled to such relief," it "is never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) ("[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.") (citation omitted); *Rush v. Hillside Buffalo, LLC*, 314 F. Supp. 3d 477, 483-84 (W.D.N.Y. 2018).⁴

Generally, even if the moving party establishes irreparable harm, a court may not grant the requested injunctive relief unless the moving party also establishes either (a) that it is likely to succeed on the merits or (b) that there are "sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships that tips decidedly in favor of the party requesting preliminary relief." *Charette v. Town of Oyster Bay*, 159 F.3d 749, 754 (2d Cir. 1998). Where, as here, "the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme," the injunction should be granted "only if the moving party meets the more rigorous likelihood-of-success standard." *Wright v. Giuliani*, 230 F.3d 543, 547 (2d Cir. 2000) (citation omitted); *see also Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 424 (2d Cir. 2004) (same).

⁴ The same standard applies for a preliminary injunction and a temporary restraining order. *Jones v. Wolf*, 467 F. Supp. 3d 74, 81 (W.D.N.Y. 2020)

A party seeking injunctive relief must also show “that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20; *Veramark Techs., Inc. v. Bouk*, 10 F. Supp. 3d 395, 400 (W.D.N.Y. 2014). “Where the government is the opposing party, the final two factors . . .—the balance of the equities and the public interest—merge.” *Jones v. Wolf*, No. 20-CV-361, 2020 WL 1643857, at *13 (W.D.N.Y. Apr. 2, 2020).

Finally, where a petitioner requests a TRO granting him the ultimate relief sought in the matter, he or she “must show a clear or substantial likelihood of success on the merits, and make a strong showing of irreparable harm in addition to showing that the preliminary injunction is in the public interest.” *Dzhabrailov v. Decker*, 2020 U.S. Dist. LEXIS 91892, at *14 (S.D.N.Y. May 26, 2020).

ARGUMENT

I. THIS COURT SHOULD NOT ORDER FRANCISCO’S IMMEDIATE RELEASE

Francisco argues that he should be immediately released because he is not in removal proceedings. This is inaccurate. On November 11, 2025, ICE served a Notice to Appear (“NTA”) on him. That NTA wrongly indicated that Francisco was an alien present without admission, and a corrected NTA was filed with the immigration court indicating that Francisco is an arriving alien.⁵ Thus, Francisco’s argument that he should be released because he is not in removal proceedings is unfounded.

⁵ This information pertaining to the NTAs is based upon my conversation with ICE counsel. Due to the time constraints in responding to this motion, I was unable to obtain the documents or a declaration as to their provenance. Should this Court require, I will obtain the documents and/or a declaration attesting to these facts.

Even if this were not the case, though, the request for immediate release should still be denied. District Courts presented with a petition for writ of habeas corpus in the immigration context generally refrain from issuing orders requiring the outright release of an alien. *See, e.g., Funez-Galvez v. Doll*, No. 3:CV-17-1931, 2018 WL 487844, at *1 (M.D. Pa. Jan. 19, 2018) (citing *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 234 (3d Cir. 2011)). Instead, if this Court were to find that Francisco's detention was unlawful, the proper remedy would be to order that a bond hearing be granted. Because Francisco's detention is lawful, however, he is not even entitled to that relief. Accordingly, Francisco's request for immediate release should be denied.

II. THIS COURT SHOULD NOT ISSUE AN ORDER ENJOINING FRANCISCO'S TRANSFER OR REMOVAL OR REQUIRING ADVANCED NOTICE OF THE SAME

As an initial matter, it should be noted that Francisco is in removal proceedings that have only just begun, and thus his removal is not likely to occur for months. Thus, any order enjoining his removal would be unnecessary and premature.

With respect to any transfer of Francisco between ICE facilities, this Court should likewise deny Francisco's request to enjoin such transfer or require advanced notice prior to it taking place. ICE has the authority to transfer aliens, and said transfer does not affect this Court's jurisdiction or his underlying immigration proceedings. Thus, such relief is not warranted.

Under the Immigration and Nationality Act, ICE has the authority to arrange for places of detention of aliens. 8 U.S.C. § 1231(g)(1). Indeed, Justice Sotomayor has noted that the government regularly transfers detainees between facilities, sometimes multiple times. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 570 (2022) (Sotomayor, J., concurring in the

judgment in part and dissenting in part). Similarly, Justice Souter has noted that in the ordinary course of immigration detention, aliens may be transferred away from lawyers, witnesses, and evidence. *Demore v. Kim*, 538 U.S. 510, 554 (2003) ((Souter, J., concurring in part and dissenting in part). Although a transfer may cause inconvenience to Francisco, this is not reason enough to strip ICE of its legislatively authorized ability to house detainees where it sees fit. Additionally, because jurisdiction has already vested upon the filing of the Petition there is no reason in this case for this Court to interfere with that authority. *See, e.g., Walker v. Searls*, No. 23-CV-140-LJV, 2024 WL 1735213, at *7 (W.D.N.Y. Apr. 23, 2024) (“In other words, regardless of where Walker is housed, this Court retains jurisdiction over his habeas petition. So there is no need to interfere with DHS's authority to “arrange for appropriate places of detention” under 8 U.S.C. § 1231(g)(1), and Walker's motion to prevent his transfer is denied.”); *Shaikh v. Barr*, No. 20-CV-6300 CJS, 2020 WL 7021443, at *3 (W.D.N.Y. Nov. 30, 2020) (same)).

Accordingly, Francisco’s request to enjoin ICE from transferring or removing him, or requiring advanced notice before doing so, should be denied in its entirety.

III. THIS COURT LACKS JURISDICTION TO HEAR THIS PETITION UNDER 8 U.S.C. § 1252 AND THUS THE MOTION FOR A TRO SHOULD BE DENIED

A. 8 U.S.C. § 1252(G) Bars Jurisdiction Over Francisco’s Claims

Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to *commence removal proceedings*, including the decision to detain an alien pending such removal

proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly “aris[es] from” the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]”) (emphasis added); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) (“[Plaintiff’s] detention necessarily *arises from* the decision to initiate removal proceedings against him.”) (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (“The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. ... Thus, an alien’s detention throughout this process *arises from* the [Secretary]’s decision to commence proceedings[.]” and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). In the Supreme Court’s words, detention pending removal is a “specification” of the decision to commence proceedings. *See Reno v. Am.-Arab*

Anti-Discrimination Comm. (“AADC”), 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”). As such, judicial review of Francisco’s claims is barred by § 1252(g).

B. 8 U.S.C. § 1252(B)(9) Bars Review Of Francisco’s Claims

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“AADC”). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal

proceedings”); accord *Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); cf. *Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” See also *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); see also *Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. See *Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”).

Here, Francisco challenges the decision and action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove him from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Francisco's claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, the Francisco *does* challenge the government's decision to detain him in the first place. *See, e.g.,* ECF No. 7 at ¶¶ 7-10, 13, 34, 54-77. Accordingly, it is subject to the preclusive effect of § 1252(b)(9).

The fact that Francisco is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention is an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss Francisco's claims for lack of jurisdiction under § 1252(b)(9). Francisco must instead present his claims before the appropriate court of appeals because he challenges the

government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

IV. FRANCISCO IS NOT ENTITLED TO A TEMPORARY RESTRAINING ORDER BECAUSE HE WILL NOT SUFFER IRREPARABLE HARM, IS NOT LIKELY TO SUCCEED ON THE MERITS, AND THE BALANCE OF EQUITIES DOES NOT TIP IN HIS FAVOR

A. Francisco Is Not Likely To Suffer Irreparable Harm

Francisco argues that his continued detention will result in irreparable harm. ECF No. 8-1 at pg. 12. But such a contention is belied by the law. The statute authorizing Francisco's detention, 8 U.S.C. § 1225(b), *mandates* that he be detained. 8 U.S.C. § 1225(b)(2)(A). And even if Francisco were correct that he was detained under § 1226(a)—which he is not—some period of detention is authorized even under that statute. 8 U.S.C. § 1226(a)(1) and (2) (allowing for continued detention of an alien or release on bond); *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (“Detention during removal proceedings is a constitutionally valid aspect of the deportation process.”) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)). Thus, he will not suffer irreparable harm by his continued detention because it is mandated by statute and because detention itself is “a constitutionally valid aspect of the deportation process.”

Additionally, continued detention during removal proceedings is insufficient on its own to constitute irreparable harm. *Hernandez-Hernandez v. Feeley*, 535 F. Supp. 3d 142, 151 (W.D.N.Y. Apr. 21, 2021). Accordingly, the motion for a TRO should be denied.

B. Francisco Is Not Likely To Succeed On The Merits

Similarly, the motion for a TRO should be denied because Francisco is not likely to succeed on the merits. He is lawfully detained under 8 U.S.C. § 1225(b)(2) as an arriving alien

who presented at a port of entry and was referred to full removal proceedings, and, as such, his detention is mandated by statute.

Beginning with the actual and plain language of the text, it is clear that Francisco is detained under 8 U.S.C. § 1225. Section 1225(a)(1) states that “[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission.” Francisco does not argue that he has been lawfully admitted, and thus he is an applicant for admission. As noted above, applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. And, regardless of what category they fall under, aliens under § 1225(b) must be detained until proceedings have concluded. *Jennings*, 583 U.S. at 297.

Although Francisco argues that he is detained pursuant to the framework set out by the Board of Immigration Appeals in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), this is not correct. He is detained as a true arriving alien who presented at a port of entry, not as an applicant for admission found within the United States without admission or inspection and parole. Thus, Francisco’s argument to this extent is unavailing. The Supreme Court has held that arriving aliens are treated as applicants for admission, and are not considered to have “effected an entry” into the United States (even if paroled or otherwise let into the country for a period of time). *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). As such, aliens in this position have limited due process rights, which include only the rights regarding admission that Congress has provided by statute. *Id.* A bond hearing is not one of those rights. As Chief Judge Wolford has held with respect to aliens subject to detention under § 1225(b), “[t]his Court is thus bound by the decision in *Thuraissigiam* to treat him as an individual who is ‘on the threshold’ and has not effected an entry into the United States. In

other words, even though Petitioner is physically located in Western New York, binding Supreme Court precedent requires this Court to treat him as though he never entered the United States.” *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 333 (W.D.N.Y. 2021). Thus, Francisco is only entitled to “[w]hatever the procedure authorized by Congress is” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212, 73 S. Ct. 625, 629, 97 L. Ed. 956 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). As courts in this district have previously held, a petitioner detained pursuant to § 1225(b) is not constitutionally entitled to receive a bond hearing under Supreme Court precedent, and this Court cannot issue an order requiring a bond hearing or his release. *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021) (“As such, like the petitioner in *Gonzales Garcia* was not ‘entitled to procedural protections beyond those provided by statute,’ 513 F.Supp.3d at 336, this Court is constrained to find that Petitioner does not have a constitutional right to any additional procedure. Accordingly, the Court cannot order Respondents to provide him with a bond hearing, nor can it order his release. The petition must be denied.”). Francisco is therefore unlikely to succeed on the merits of his Amended Petition, and the motion for a TR should be denied in its entirety on this basis alone.

Additionally, the question of Francisco’s risk of flight or risk of danger is immaterial. Congress has already decided that aliens like Francisco who are applicants for admission shall be detained pending removal proceedings against them. 8 U.S.C. § 1225(b)(2)(A) (“[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.”). Thus,

Francisco's invitation to this Court to revisit the question already answered by Congress should be rejected.

Francisco's argument about re-arrest without procedural due process likewise fails for this reason. Supreme Court precedents indicate that aliens who have been admitted may claim due-process protections beyond what Congress has provided even when their legal status changes (*e.g.*, an alien who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that arriving aliens conceptually treated as if stopped at the border are entitled to such additional rights. Thus, Francisco's arguments about procedural due process fail.

C. The Balance Of Equities Favor The Government And The Enforcement Of Immigration Laws

The balance of equities in this case favors the government, again necessitating the denial of the motion for a TRO. As the Supreme Court has held, when the government “is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (Roberts, C. J., in chambers). This is especially true in the present case where the Supreme Court has recognized that the presence of “the Government's efforts to prioritize stricter enforcement of the immigration laws enacted by Congress.” *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637, at *4 (U.S. Sept. 8, 2025) (Kavanaugh, J., concurring). Accordingly, the Court should find that the balance of equities tips in the government's favor, and deny the motion for a TRO.

V. FRANCISCO'S FOURTH AMENDMENT RIGHTS WERE NOT VIOLATED

Francisco argues that his Fourth Amendment rights were violated by his arrest without a warrant. ECF No. 7 at ¶¶ 92-93. But immigration statutes explicitly allow for arrest without a warrant. See 8 U.S.C. § 1357(a)(2); see generally *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637, at *3 (U.S. Sept. 8, 2025) (Kavanaugh, J., concurring) (discussing lesser requirement to stop aliens and likelihood of success by the government regarding an argument like the one raised in this case). Francisco's argument about having SIJ status and where he was travelling to or from are immaterial: he is an alien within the United States without lawful status in violation of the law. The fact that he was in a car gives much reason to believe that he would be "likely to escape before a warrant can be obtained for his arrest". *Id.* Similarly, his argument that there was no legal basis to arrest him is without merit. Section 1357 provides such statutory basis. Francisco's argument that he was at liberty pursuant to a prior release by the government or that he had SIJ status/deferred action do not make his presence legal or make him any less of any alien present in violation of law and subject to arrest without warrant under § 1357, and thus subject to arrest.

VI. FRANCISCO SHOULD BE REQUIRED TO POST A BOND IF ANY INJUNCTION IS ORDERED

Federal Rule of Civil Procedure 65(c) requires a court to issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added). Here, any injunction prohibiting the government from transferring Francisco to another facility or removing him from the country will result in damages to the government from the increased costs associated with detaining him in a

facility which may be more expensive than other facilities, and for detaining him while he could or should be removed from the country. Accordingly, Respondents respectfully request that if any injunction is entered that Francisco be required to post a bond.

CONCLUSION

For the foregoing reasons, the motion for a temporary restraining order should be denied.

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