

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

LOURIVAL DOS SANTOS LOPES,

Petitioner,

v.

Case No.: 3:25-cv-1522-WWB-LLL

SCOTTY RHODEN, in his official capacity as Sheriff of Baker County; KRISTI NOEM, in her official capacity as the Secretary of the Department of Homeland Security; GARRETT RIPA, in his official capacity as Acting Field Office Director, U.S. Immigration and Customs Enforcement, Miami Field Office; and PAM BONDI, in her official capacity as Attorney General of the United States,

Respondents.

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**RESPONSE TO EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
PROHIBITING TRANSFER OR REMOVAL**

Respondents, KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security (DHS), GARRETT J. RIPA, in his official capacity as Field Office Director of the U.S. Immigration and Customs Enforcement (ICE), Miami Field Office, and PAMELA BONDI, in her official capacity as Attorney General of the United States, ("Federal Respondents"), respond to Petitioner Lourival Dos Santos Lopes' Emergency Motion for Temporary Restraining Order Prohibiting Transfer or Removal (Doc. 14) and request that the instant Motion be denied. Lopes has not met his burden of making a clear showing that his detention is unlawful or prohibiting his transfer or removal necessitates the extraordinary remedy of a temporary restraining order (TRO).

PRELIMINARY STATEMENT

In the instant Motion, Petitioner seeks an order prohibiting ICE from transferring him out of the Middle District and/or removing him from the United States pending resolution of his petition for habeas relief. Because claims regarding transfers is not cognizable under 28 U.S.C. § 2241, the Court should deny the instant Motion.

MEMORANDUM

I. Legal Standard.

“A TRO or preliminary injunction is appropriate where the movant demonstrates that: (a) there is a substantial likelihood of success on the merits; (b) the TRO or preliminary injunction is necessary to prevent irreparable injury; (c) the threatened injury outweighs the harm that the TRO or preliminary injunction would cause to the non-movant; and (d) the TRO or preliminary injunction would not be averse to the public interest. *Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034–35 (11th Cir. 2001). “The preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant ‘clearly carries the burden of persuasion’ as to the four prerequisites.” *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1519 (11th Cir. 1983). The burden to prove entitlement to a TRO is on the petitioner, and respondent bears no burden to prove that petitioner is not entitled to a TRO. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 443 (1974).

II. **Argument.**

A. **Lopes is not likely to succeed on the merits.**

First, the Court lacks jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g). Because this jurisdictional issue was already addressed in the response to the Petition, Respondents will not rehash each of the arguments addressed in the response. See Doc 19, p. 5-7. But, the Federal Respondents will briefly address these issues.

Under § 1225(b)(2), the “alien shall be detained for a proceeding under section 1229a”—*i.e.*, full removal proceedings—after “the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Read plainly, these subsections “mandate detention of applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.

Given its statutory obligation, ICE detained Lopes under § 1225(b)(2). The Parties do not dispute Petitioner entered the United States illegally and without any authorization. Lopes’ detention pending his removal proceedings is not unlawful; rather, it is statutorily required. 8 U.S.C. § 1225(b)(2)(A); see *Chaviano v. Bondi*, 2025 WL 1744349, at *6-8 (S.D. Fla. June 23, 2025). Lopes contends his detention under § 1225 is improper and his detention should be under § 1226(a). But Lopes has not meet his burden to establish detention under § 1226 should apply to him. Rather, § 1226 is far broader than § 1225. Specifically, § 1226 applies to any “alien.” 8 U.S.C. § 1226(a). An “alien” is “any person not a citizen or national of the United States.” *Id.* § 1101(a)(3). Meanwhile, the phrase

“applicant for admission” in § 1225(b)(2) has distinct meaning, and not every single alien entering without inspection falls under this provision. Rather, the facts and circumstances concerning Lopes demonstrate he is an applicant for admission under § 1225(b)(2).

Lopes illegally entered the United States several years ago. He has no permission or status to remain in this country. So, it’s undisputed Lopes has not been admitted to the United States. Thus, Lopes has no status and was never admitted to the United States. Put differently, Lopes must be an applicant for admission if he wants to stay here. *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (Petitioner “wishes to stay in this country. This makes [him] an ‘applicant for admission,’ consistent with the conclusion of the BIA in *Hurtado* and *Jennings*.”). Thus, Lopes’ detention is not unlawful.

Second, contrary to Lopes’ assertions, the decision in *Maldonado Bautista v. Noem*, Case No. 5:25-cv-1873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec 18, 2025), should not apply to his case and, thus, does not entitle him to the relief he requests. Notably, the court in *Maldonado Bautista*, in entering its final judgment, declined to vacate the decision of the BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. 616 (BIA 2025). Hence, *Hurtado* remains binding on ICE and immigration judges. See 8 U.S.C. §1103(a)(1) (“determination and ruling by the Attorney General to all questions of law shall be controlling”). Thus, the final judgment entered by the *Maldonado Bautista* court does not entitle Petitioner to an individualized hearing.

Further, even if Petitioner does fit within the class in *Maldonado Bautista*, that decision is not binding on this Court. The *Maldonado Bautista* case is on appeal as of December 18, 2025 (Doc. 95). Hence, this Court should not give preclusive effect to the

declaratory final judgment entered in *Maldonado Bautista* on December 18, 2025. See *Maldonado Bautista*, Case No. 5:25-cv-1873-SSS-BFM (Doc. 94). Moreover, the declaratory judgment entered in *Maldonado Bautista* has no preclusive effect outside of the Central District of California and over custodians who are located outside of that District. See *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998). See also *Burnham v. Superior Court of Cali.*, 495 U.S. 604, 608 (1990). Hence, the Court should not apply the decision entered in *Maldonado Bautista* to this case.

For the reasons set out above, Lopes is unlikely to succeed on the merits.

B. Lopes has not shown irreparable harm.

Lopes has not demonstrated that he will suffer irreparable harm absent the injunctive relief he seeks. “A showing of irreparable harm is ‘the *sine qua non* of injunctive relief.’” *NE Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir. 1990). Merely showing a “possibility” of irreparable harm is insufficient. See *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. “Although removal is a serious burden for many aliens, it is not categorically irreparable.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Lopes has not made such a showing here. “[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm . . .” *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).

Here, Petitioner has not demonstrated that he will suffer irreparable harm.

C. The balance of the equities and public interests favor the Government.

Finally, the balance of equities and the public interest weigh decisively against Lopes' request for a TRO. It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (stating "[t]he Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases).

D. Prohibition against transfer out of the Middle District of Florida should be denied.

To the extent Petitioner seeks to enjoin Respondents from transferring him outside this District because it will impede these proceedings, such relief is not warranted.

"Claims regarding prison transfers are generally not cognizable under § 2241." *Rathod v. Barr*, No. 1:20-CV-161-P, 2020 WL 1492790, at *2 (W.D. La. Mar. 5, 2020) (denying immigration detainee's request to enjoin ICE from transferring him to another facility), *report and recommendation adopted*, No. 1:20-CV-161-P, 2020 WL 1501891 (W.D. La. Mar. 25, 2020); *see also Greenhill v. Menifee*, 202 F. App'x 799, 800 (5th Cir. 2006) (affirming denial of claim as not cognizable under § 2241 "because prisoners lack a constitutionally protected interest in where they are incarcerated"); *Zapata v. United States*, 264 F. App'x 242, 243-44 (3d Cir. 2008) (district court lacked jurisdiction over a § 2241 petition that challenged a transfer).

Further, determining where aliens will be detained is the task of the Attorney General. *See 8 U.S.C. §1231(g)(1)* (stating "[t]he Attorney General shall arrange for

appropriate places of detention for aliens detained pending removal or a decision on removal.”). Petitioner “does not have a right to be housed in any particular facility, nor does this court have the authority to order the ICE to house [him] in any particular facility.” *Rathod*, 2020 WL 1492790, at *2; *see also Woldegiorgise v. ICE*, 1:12-CV-02778, 2013 WL 664160, at *2 (W.D. La. Jan. 23, 2013) (denying request to enjoin ICE from transferring detainee because a detainee “does not have a right to be housed in any particular facility, nor does this court have the authority to order the ICE to house [the detainee] in any particular facility”), *report and recommendation adopted*, 2013 WL 672388 (W.D. La. Feb. 22, 2013); *Sasso v. Milhollan*, 735 F. Supp. 1045, 1047 (S.D. Fla. 1990) (denying motion for preliminary injunction to enjoin ICE from transferring the petitioner). Finally, there is no indication that Petitioner’s transfer will hinder his ability to participate in this proceeding or his removal proceedings.

CONCLUSION

Based on the foregoing arguments and citations of authority, Respondents submit that Lopes has not met his high burden of establishing entitlement to injunctive relief. Thus, Petitioner’s Motion should be denied.

Dated: January 16, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 16, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send notice of filing and a downloadable copy of the filed document to the following CM/ECF participant listed below:

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