UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | |
|---|---|
| CARLOS ENRIQUE AVILA SANDOVAL, the Counsul of Guatemala, as NEXT FRIEND of THREE-HUNDRED AND FIFTY NEW BEDFORD IMMIGRANT WORKERS, (a.k.a. JOHN/JANE DOE ## 1-350),<br><br>Petitioners,<br><br>v.<br><br>UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT DIVISION OF THE DEPARTMENT OF HOMELAND SECURITY; JULIE L. MYERS, Assistant Secretary of Homeland Security for Immigration and Customs Enforcement; BRUCE CHADBOURNE, Field Office Director for Detention and Removal, Boston Field Office, Immigration and Customs Enforcement; MICHAEL CHERTOFF, Secretary, Department of Homeland Security; and ALBERTO GONZALES, Attorney General of the United States,<br><br>Respondents. | C.A. No. 07-10471-RGS |

**OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiffs/Petitioners seek an order from this Court enjoining the transfer of the Petitioners out of state from Ft. Devens in Ayer, Massachusetts, where they were temporarily detained since being taken into custody on March 6, 2007, in connection with an enforcement action at a manufacturing facility in New Bedford, Massachusetts that employed hundreds of illegal aliens.

Because the U.S. District Court lacks jurisdiction to review the discretionary transfer of aliens for detention pending proceedings, Petitioners cannot show a likelihood of success on the

merits. Nor can Petitioners show irreparable harm, since they will have the same rights and proceedings in Texas or elsewhere in the United States -- including the rights to seek release from custody before an Immigration Judge, a hearing, an opportunity to move for change of venue, and the right of administrative appeal -- as they would have in Massachusetts.

Since Petitioners cannot show that the four factors for an injunction weigh in their favor, the Motion for a Temporary Restraining Order should be denied.

PETITIONERS FAIL IN THEIR BURDEN OF ESTABLISHING THAT THE FOUR-PART INJUNCTION STANDARD WEIGHS IN THEIR FAVOR, AND THE COURT SHOULD DENY THE MOTION FOR A RESTRAINING ORDER OR INJUNCTION.

The First Circuit has set out the four-part standard that must be met for the entry of a preliminary injunction in Esso Standard Oil Co. (P. R.) v. Monroig-Zayas, 445 F.3d 13, 17-18 (1st Cir. 2006) (citation omitted). See also Arevalo v. Ashcroft, 344 F.3d 1, 9 (1st Cir. 2003)("in sum, we hold that the applicable standard for evaluating requests for stays pending review of final orders of removal is the four-part algorithm used for preliminary injunctions.").

In assessing whether an injunction is merited, a court must consider: 1) the likelihood of success on the merits; (2) the potential for irreparable harm [to the movant] if the injunction is denied; (3) the balance of relevant impositions, i.e., the hardship to the nonmovant if enjoined as contrasted with the hardship to the movant if no injunction issues; and (4) the effect (if any) of the court's ruling on the public interest. Esso Standard Oil Co. (P. R.) v. Monroig-Zayas, 445 F.3d at 17-18.

The party seeking the injunction bears the burden of establishing that these four factors weigh in its favor. Nieves-Márquez v. Puerto Rico, 353 F.3d 108, 120 (1st Cir. 2003).

The likelihood of success on the merits has been recognized as "the sine qua non" to

preliminary injunctive relief. Weaver v. Henderson, 984 F.2d 11, 12 (1st Cir. 1993). See also Lancor v. Lebanon Hous. Auth., 760 F.2d 361, 362 (1st Cir. 1985) ("[o]f these four factors, the probability-of-success component in the past has been regarded by us as critical in determining the propriety of injunctive relief.")

A. There Is No Likelihood Of Success On The Merits Because The Court Lacks Subject Matter Jurisdiction To Review Any Aspect Of A Removal Case Other Than A Pure Detention Challenge In Habeas Corpus Proceedings.

In the instant action, there is no likelihood of success on the merits because the Court undoubtedly lacks subject matter jurisdiction over any aspect of a removal action against an alien, except for habeas corpus claims of unlawful detention.[1] Ishak v. Gonzales, 422 F.3d 22, 28 (1st Cir. 2005) ("enactment of the Real ID Act . . . in the plainest of language, deprives the district courts of jurisdiction in removal cases.").

In particular, the Court lacks subject matter jurisdiction to review the discretionary determination of the Secretary of the Department of Homeland Security under 8 U.S.C. § 1231(g)(1) as to the "appropriate places of detention for aliens detained pending removal or a decision on removal." See 8 U.S.C. § 1231(g)(1) ("The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal."); Gandarillas-Zambrana v. BIA, 44 F.3d 1251, 1256 (4th Cir. 1995) ("The INS necessarily has the authority to determine the location of detention of an alien in deportation proceedings . . . and

[1] Habeas challenges to pure detention -- that is, challenges only as to the fact of detention or continuing detention and not vicariously to the lawfulness of a removal order -- are not affected by the REAL ID Act section 106 jurisdictional amendments. See Conference Report, 151 Cong. Rec. H2813, 2873, 109th Cong., 1st Sess., available at 2005 WL 1025891 (May 3, 2005)("Moreover, section 106 would not preclude habeas review over challenges to detention that are independent of challenges to removal orders."). See e.g., Hernandez v. Gonzales, 424 F.3d 42 (1st Cir. 2005) (a habeas petition challenging "only the petitioner's detention rather than his removal" is not barred by amendments made by the REAL ID Act.).

therefore, to transfer aliens from one detention center to another."); Rios-Berrios v. INS, 776 F.2d 859, 863 (9th Cir. 1985) ("We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide."); Sasso v. Milhollan, 735 F.Supp. 1045, 1046 (S.D.Fla. 1990) (holding that the Attorney General has discretion over location of detention).

The Attorney General's discretionary power to transfer aliens from one locale to another, as he deems appropriate, arises from this statutory language. See Van Dinh v. Reno, 197 F.3d 427, 433 (10th Cir. 1999).

It is further provided at 8 U.S.C. § 1252(a)(2)(B)(ii) that:

242(a)(2)(B) DENIALS OF DISCRETIONARY RELIEF.-

> Notwithstanding any other provision of law (statutory or nonstatutory) including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review-
>
> * * *
>
> (ii) any other decision or action of the Attorney General or the Secretary of homeland security the authority for which is specified under this title to be in the discretion of the Attorney General or the Secretary of homeland security other than the granting of relief under section 208(a).

(Emphasis added).

It is plain that the statutory authority of the Attorney General under 8 U.S.C. § 1231(g)(1) to "arrange for *appropriate* places of detention" (emphasis added) imports the exercise of discretion. Avramenkov v. INS, 99 F.Supp.2d 210, 213 (D. Conn. 2000). In Avramenkov, supra, an alien who had been placed into removal proceedings filed a habeas corpus petition seeking, inter alia, an injunction preventing the former Immigration and Naturalization Service

("INS") from transferring petitioner from Connecticut to Louisiana. Avramenkov v. INS, 99 F.Supp.2d at 213. The Avramenkov court determined that with respect to 8 U.S.C. § 1231(g)(1), "[t]he Attorney General's discretionary power to transfer aliens from one locale to another, as she deems appropriate, arises from this statutory language", and agreed that under the discretionary review bar of 8 U.S.C. § 1252(a)(2)(B)(ii) "the court lacks jurisdiction to prevent the INS from transferring the Petitioner to a federal detention facility in Oakdale, Louisiana." Id. See also Van Dinh v. Reno, 197 F.3d at 434 ("Because the discretionary decision to transfer aliens from one facility to another and the correlative discretionary decision to grant our deny relief from such a transfer is a 'decision . . . under this subchapter.' Judicial review of that decision is expressly barred by § 1252(a)(2)(B)(ii)."). Cf. Latu v. Ashcroft, 375 F.3d 1012, 1019 (10th Cir. 2004) (court holding that district court lacked habeas corpus jurisdiction under 28 U.S.C. § 2241(c) to hear claim of alien habeas petitioner challenging INS decision to commence removal proceedings in one state rather than another, because "[petitioner] "cannot allege a constitutional or legal right to have removal proceedings against him commenced in a particular place -- that decision is left to the unfettered discretion of the attorney general. [Petitioner] therefore cannot satisfy the requirement of stating that he is being held in violation of the federal laws or Constitution."

Moreover, even if judicial review were not statutorily barred, the command of 8 U.S.C. § 1231(g) to "arrange for appropriate places of detention" for aliens in removal proceedings provides no standard against which to review the exercise of discretion. The First Circuit has held that "review is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." Luis v. INS, 196 F.3d 36,

40 (1st Cir. 1999)(citing Heckler v. Chaney, 470 U.S. 821, 830 (1985). Because the decision where to commence removal proceedings against an alien "is left to the unfettered discretion of the attorney general", Latu v. Ashcroft, 375 F.3d at 1019, "the very nature of the claim renders it not subject to judicial review". Luis v. INS, 196 F.3d at 40. Cf. St. Fort v. Ashcroft, 329 F.3d 191, 202 (1st Cir. 2003) ("[t]he scope of habeas review is not the same as the scope of statutory judicial review in the courts of appeal. . . . if a statute makes an alien eligible to be considered for a certain form of relief, he may raise on habeas the refusal of the agency to even consider him. But he may not challenge the agency's decision to exercise or not exercise its discretion to grant relief.").

Accordingly, Petitioners have failed in their burden of establishing any likelihood of success on their claims, see Nieves-Márquez v. Puerto Rico, 353 F.3d at 120, and the motion for injunction should be denied.

B. No Irreparable Harm Will Be Suffered If The Injunction Is Denied.

Petitioners have failed to establish any irreparable harm if the injunction is denied. Petitioners have no "constitutional or legal right to have removal proceedings against him commenced in a particular place", Latu v. Ashcroft, 375 F.3d at 1019. The Immigration and Nationality Act (see 8 U.S.C. §§ 1101 et seq.) gives Petitioners the same rights and privileges outside of Massachusetts as in Massachusetts. See e.g. Avramenkov v. INS, 99 F.Supp.2d at 214.

Aliens placed into removal proceedings must have their removal cases heard before an Immigration Judge. 8 U.S.C. § 1229a(a)(1) ("An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien."). In the case of an alien determined by an Immigration Judge to be removable from the United States, the removal order may then be

appealed administratively as of right to the Board of Immigration Appeals ("BIA"). 8 C.F.R. § 1003.38(a) (2006) ("Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by [8 C.F.R. § 1003.1(b) (providing BIA appellate jurisdiction from decisions of Immigration Judges in exclusion, deportation, and removal cases)]".

Judicial review of any final administrative order of removal entered against an alien may then be pursued only at the appropriate circuit court of appeals. 8 U.S.C. §§ 1252(b)(1) (directing that "[t]he petition for review must be filed not later than 30 days after the date of the final order of removal"), and 1252(b)(2) (prescribing venue in review of a removal order, "[t]he petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings."). See also Ishak v. Gonzales, 422 F.3d 22, 28 (1st Cir. 2005) ("The Real ID Act amended section 242 of the INA. 8 U.S.C. § 1252, to place review of all final removal orders, for both criminal and non-criminal aliens, in the courts of appeals. . . . By channeling review to the courts of appeals, Congress sought to streamline what it saw as 'bifurcated and piecemeal' review of orders of removal.").

Importantly, if an alien detained by ICE pending determination of his removal proceedings believes he should be released from ICE custody, he may apply for a redetermination of his custody status before an Immigration Judge. See 8 C.F.R. § 1003.19(a) (2006).

These statutory and regulatory provisions obtain to all affected removal proceedings, obviously, regardless of the physical location of an alien's removal proceedings. What is more, should an alien in removal proceedings desire that his case be heard in a location different than

the one he is in, regulations provide for apply for a discretionary change of venue before the Immigration Judge. 8 C.F.R. § 1003.20 (2006) (Immigration Judge "for good cause, may change venue only upon motion by one of the parties").

Petitioners assert that they will suffer irreparable harm because the transfer out of state will deprive them of representation by attorneys in Massachusetts they may want to represent them during the removal proceedings, and that any transfer from Massachusetts will interfere with their ability to present their case. Such a claim does not raise the risk of irreparable harm or mean that the balance of harms weighs in plaintiff's favor or create any basis to enjoin the transfer.

As an initial matter, while an alien in removal proceedings is entitled to representation by counsel, "at no expense to the Government," 8 U.S.C. § 1362, the right to counsel in a civil immigration proceeding does not implicate the Sixth Amendment concerns of criminal cases. See, e.g., Bernal-Vallejo v. INS, 195 F.3d 56, 63 (1st Cir. 1999).[2] And even in a criminal case, a defendant's absolute right to counsel does not mean an absolute right to *particular* counsel. U.S. v. Poulack, 556 F.2d 83, 86 (1st Cir. 1977).

Nor in this context does an alleged "existing" relationship with counsel -- and petitioners here have not shown here that such a relationship "existed" before this action -- establish undue

[2]Indeed, in motions to reopen or reconsider that raise ineffective assistance of counsel, the First Circuit has recognized a high threshold for constitutional claims. See Betouche v. Ashcroft, 357 F.3d 147 (1st Cir. 2004) (recognizing Fifth Amendment due process rights may be implicated only where counsel's assistance was so incompetent as to render removal proceedings "fundamentally unfair"); Hernandez v. Reno, 238 F.3d 50, 57 (stating that the court was "unwilling, unless directed to do so, to incorporate into civil deportation proceedings the whole apparatus of Sixth Amendment precedent."); Lozada v. INS, 857 F.2d 10, 13 (1st Cir. 1988); Bernal-Vallejo v. INS, 195 F.3d 56, 63 (1st Cir. 1999) (applicant claiming denial of due process must show prejudice).

interference with due process or right to counsel, or any prejudice. Transfer to another location for detainment and removal proceedings does not by itself establish interference with counsel. In Avramenkov v. INS, 99 F.Supp.2d 210, 214 (D. Conn. 2000), for example, a petitioner seeking an injunction preventing the INS from transferring him from Connecticut to Louisiana argued that the transfer would interfere with his pre-existing attorney-client relationship, the court determined that Avramenkov had failed to "provide evidence of an ongoing relationship with his attorney or that a transfer to Louisiana would effectively destroy that relationship."

The Avramenkov court reasoned that while a transfer to Louisiana might make communication inconvenient for petitioner's witnesses, the transfer alone is "insufficient to establish a prejudice required to prevent a transfer." Id. See also Rady v. Ashcroft, 193 F.Supp.2d 454, 457 (D. Conn. 2002) ("While the transfer to Louisiana will make it more difficult for the Petitioner to communicate with her attorney, the Petitioner will not be prevented from such communication. Petitioner will hold the same rights and be subject to the same removal proceedings whether she remains in Connecticut or is transferred to Louisiana.").

Finally, but not least, there is no irreparable injury relating to child care issues.[3] The ICE Field Office Director, Bruce E. Chadbourne, has set the record straight that the State Department of Social Services ("DSS") has been involved even before the operation was underway with the goal of assuring child care for detainees. See Attachment A, Declaration of Field Office Director

[3] See e.g. Payne-Barahona v. Gonzales, --- F.3d --- (1st Cir. 2007) (2007 WL 60573, *2)(observing that "deportations of parents are routine and do not of themselves dictate family separation. If there were such a right, it is difficult to see why children would not also have a constitutional right to object to a parent being sent to prison or, during periods when the draft laws are in effect, to the conscription of a parent for prolonged and dangerous military service.").

Bruce Chadbourne, ¶ 17. DSS has been provided unrestricted access to interview those immigration detainees at Ft. Devens who have either expressed concern over child care issues, or whom DSS itself has sought to interview. Id. ¶ 18. DSS has had all the access it has asked for in terms of interviewing the Ft. Devens detained population, and in fact last evening, Wednesday March 7, 2007, twenty (20) DSS agents toured the Ft. Devens immigration detainee dormitories, and detainees were advised that any who desired to speak to DSS officials could and should do so then. Id., ¶ 20. Upon information and belief, the DSS workers interviewed every detainee who expressed a willingness to speak with them. Id.

In the end, ICE efforts to address child care issues have continued with DSS and, upon information and belief after continuing inquiry, there are at present no unaddressed emergent child care situations relating to any of the aliens now in immigration detention at Ft. Devens as a result of the New Bedford worksite enforcement action. Id., ¶ 21. Moreover, ICE Field Office Director Chadbourne has declared that those individual detainees as to whom DSS has expressed concerns relating to child care issues will not be transferred[4] for removal hearing locations outside of Massachusetts. Id.

Obviously, as set out above in the removal proceeding regulations, it is provided that any particular claim by an alien in removal proceedings that his or her case should be heard in one

[4] The issue of family ties is rarely treated in transfer cases, given that there is no associated right to avoid hardship to family members in detainment location decisions. The notion of hardship to family members has been discussed in the context of complicating a petitioner's ability to use them for witnesses in removal proceedings, however. For example, in Rady v. Ashcroft, 193 F.Supp.2d 454, 457 (D. Conn. 2002), a case with facts very similar to Avramenkov, supra, the petitioner sought a waiver of removability on the basis of undue hardship to her children per INA § 212(h). The court found that although the transfer would complicate communications and require her relatives to travel to Louisiana, the children would still be able to testify because "[c]ounsel for Petitioner will continue to have easy access to Petitioner's children in preparing for any hearing." Rady v. Ashcroft, 193 F.Supp.2d at 457.

location rather than another, must be raised by motion to change venue to the Immigration Judge in administrative removal proceedings. 8 C.F.R. § 1003.20 (2006) (Immigration Judge "for good cause, may change venue only upon motion by one of the parties").

Congress has delegated the responsibility for the orderly determination of such claims to the administrative offices of the Immigration Judge and the Board of Immigration Appeals, and has repeatedly and explicitly provided in various statutory commands that "no court shall have jurisdiction" matters related to removal proceedings, except by petition for review of a final administrative order of removal to an appropriate circuit court of appeal. See 8 U.S.C. §§ 1252(a)(2)(B), 1252(b)(9), 1252(g); Ishak v. Gonzales, 422 F.3d 22, 28 (1st Cir. 2005) ("enactment of the Real ID Act . . . in the plainest of language, deprives the district courts of jurisdiction in removal cases."). It follows that this Court lacks jurisdiction to enjoin the transfer of plaintiff from Massachusetts. Cf. Tejada v. Cabral, 424 F.Supp.2d 296, 298 (D. Mass. 2006)(Young, D.J.)("Congress made it quite clear that all court orders regarding alien removal -- be they stays or permanent injunctions -- were to be issued by the appropriate court of appeals.").

Accordingly, Petitioners have failed in their burden of establishing that any irreparable injury would result if the injunction is not issued, see Nieves-Márquez v. Puerto Rico, 353 F.3d at 120, and the motion for injunction should be denied.

C. The Balance of Relevant Impositions Tilts Sharply Against Issuance of The Injunction.

The balance of relevant impositions, i.e., "the hardship to the nonmovant if enjoined as contrasted with the hardship to the movant if no injunction issues", Esso Standard Oil Co. (P. R.) v. Monroig-Zayas, 445 F.3d at 17-18, counsels strongly against enjoining the transfer of the Ft. Devens immigration detainees. Immigration and Customs Enforcement ("ICE") Field Office

Director Bruce E. Chadbourne has given his declaration analyzing the foreseeable results of an order enjoining the planned orderly transfer of the Ft. Devens detainees. See Attachment A, Declaration of Field Office Director Bruce Chadbourne, ¶¶ 10-16.

Director Chadbourne points out that the operational plan is to progressively reduce the immigration detainee population at Ft. Devens over two or three days by the daily transportation on scheduled U.S. Marshal Service JPATS flights. Id., ¶ 6. However, in the judgment of Director Chadbourne -- whose responsibilities include oversight of all detention and removal operations by ICE in Massachusetts, id., ¶ 2 -- an unplanned interruption of the JPATS flights transferring the aliens to their removal hearing destinations "would very seriously disrupt the operational mission and possibly affect the operational security necessary to control a detained population in a non-correctional dormitory setting such as exists at Ft.

Moreover, any interruption in the orderly planned transfer of the immigration detainees out of Ft. Devens "would increase the continuing detainee population at Ft. Devens beyond what has been planned for in terms of available ICE officers to provide the necessary operational security for the alien detainee population itself and for the ICE agents on site." Id. In this connection, Director Chadbourne has indicated that although efforts might be attempted to adjust the planned progressive drawn-down of ICE officer presence commensurate with the reduction of the immigration detainee population, "it is uncertain whether such eleventh-hour efforts at logistics changes would be successful in maintaining adequate security and operation control of the detained alien population at Ft. Devens." Id., ¶ 13.

In fact, because the U.S. Army troop dormitory accommodations for the immigration detainees at Ft. Devens are essentially residential and not correctional in design, a much greater

security presence of ICE officers is required to maintain operation control of the immigration detainee population in this setting. Id., ¶ 14. The end result of any "back up" in the Ft. Devens immigration detainee population caused by any injunction against their JPATS transportation to removal hearing locations, would be pressure on the remaining ICE officer corps and, in the judgment of Field Office Director Chadbourne: "the lack of sufficient ICE security personnel at Ft. Devens is a distinct possibility as a result of any order preventing the planned orderly transfer of the Ft. Devens detainees, and it is a possibility that could jeopardize the safety of both the detainees and the remaining available security personnel on site." Id., ¶ 14.

The hardship to the non-movant, the government in this case, if an injunction is issued is therefore far greater than any arguable hardship to the movant if the injunction is not issued. Either way, the movant is entitled to removal hearings before an Immigration Judge upon an administrative record at which he may present evidence and apply for any available relief from removal. 8 U.S.C. § 1229a(a)(1) ("An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien."). If ordered removed after administrative hearings, movant may appeal that order to the Board of Immigration Appeals ("BIA") 8 C.F.R. § 1003.38(a) (2006)("Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by [8 C.F.R. § 1003.1(b) (providing BIA appellate jurisdiction from decisions of Immigration Judges in exclusion, deportation, and removal cases)]". If dissatisfied with any result from the BIA, he may seek judicial review at the circuit court of appeals. 8 U.S.C. §§ 1252(b)(1) (directing that "[t]he petition for review must be filed not later than 30 days after the date of the final order of removal"), and 1252(b)(2) (prescribing venue in review of a removal order, "[t]he petition for review shall be filed with the court of

appeals for the judicial circuit in which the immigration judge completed the proceedings.").

If specific Petitioners complain that their removal proceedings will not be conducted in Massachusetts and that relevant good cause exists for their removal proceedings to be held in a location other than where their cases are administratively initiated by ICE after transfer from Ft. Devens, they enjoy the administrative remedy of moving for change of venue before the Immigration Judge. 8 C.F.R. § 1003.20 (2006) (Immigration Judge "for good cause, may change venue only upon motion by one of the parties"). But cf. Latu v. Ashcroft, 375 F.3d 1012, 1019 (10th Cir. 2004) (court holding that district court lacked habeas corpus jurisdiction under 28 U.S.C. § 2241(c) to hear claim of alien habeas petitioner challenging INS decision to commence removal proceedings in one state rather than another, because "[petitioner] "cannot allege a constitutional or legal right to have removal proceedings against him commenced in a particular place -- that decision is left to the unfettered discretion of the attorney general.").

Finally, if specific Petitioners believe they should be released from ICE custody, they may apply for a redetermination of custody status before an Immigration Judge. See 8 C.F.R. § 1003.19(a) (2006). If Petitioners are unhappy with any custody redetermination by the Immigration Judge, they may appeal that decision to the BIA. 8 C.F.R. § 1003.38(a) (2006)("Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by [8 C.F.R. § 1003.1(b)(7) (providing BIA appellate jurisdiction from decisions of Immigration Judges "relating to bond, parole, or detention of an alien")]").

As opposed to the location neutrality of the applicable statutory and regulatory rights enjoyed by movant in removal proceedings, an injunction against transfer of the immigration detainees from Ft. Devens "would very seriously disrupt the operational mission and possibly

affect the operational security necessary to control a detained population in a non-correctional dormitory setting such as exists at Ft. Devens." See Attachment A, Declaration of Field Office Director Brice E. Chadbourne, ¶ 11.

Accordingly, the "balance of relevant impositions" to the parties tips very strongly against issuance of the injunction in this case. Esso Standard Oil Co. (P. R.) v. Monroig-Zayas, 445 F.3d at 17-18.

D. The Issuance of An Injunction Would Operate Against Public Interest.

The effect of an injunction against transfer of the Ft. Devens detainees by scheduled JPATS would seriously operate against the public interest. Approximately 600 ICE agents from across the region and the United States traveled to Massachusetts to assist in the success of the operation. See Attachment A, Declaration of Field Office Director Brice E. Chadbourne, ¶ 8. A substantial operational commitment of ICE personnel at the destination of the transfer flights is also in place to receive and process the transferees at the destination location of those scheduled flights. Id.

Enjoining the scheduled JPATS flight transfer of the Ft. Devens immigration detainees would very seriously disrupt the operational mission and possibly affect the operational security necessary to control a detained population in a non-correctional dormitory setting such as exists at Ft. Devens. Id., ¶ 11.

Disruption of the scheduled transfer flights would have the effect of stranding the immigration detainees at Ft. Devens, with the result that there would be insufficient time and resources available to process the immigration detainees for other detention locations before today's Thursday, March 8, 2007, close-of business deadline dictated by the U.S. Army

command at Ft. Devens for cessation of all ICE operations and vacation of all ICE immigration detainees from Ft. Devens. Id., ¶ 15. The U.S. Army has scheduled Army personnel to occupy the same dormitory units the immigration detainees are now leaving, beginning Friday, March 9, 2007. Id.

The foreseeable result of the issuance of an injunction disrupting the scheduled JPATS transfer flights then "would be the forced unplanned release back into the community of detained aliens identified as removable from the United States." Id. Because such an unplanned and forced released of the Ft. Devens immigration detainees would necessarily be done without the normal individualized flight risk assessment for releasable aliens, "it is likely that many of the released immigration detainees would then abscond from ICE supervision to find renewed unlawful employment in new locations elsewhere." Id., ¶ 16.

The effect on the public interest of issuance of an injunction disrupting the scheduled JPATS transfer flights, then, would be to defeat an important enforcement mission of ICE generally and the very goal of the New Bedford worksite enforcement operation mission in particular: the enforcement of the immigration laws of the United States by identification of illegal aliens unlawfully employed in the United States, and the referral of those aliens into removal proceedings. See id., ¶ 16.

The very significant expenditure of public funds involved in the New Bedford worksite enforcement operation by the commitment of some 600 Federal agents and associated operational materiel locally and more at the destination locations of the scheduled JPATS flights, and the very significant public interest in the enforcement of the immigration statutes written by Congress, would be frustrated or wasted by issuance of an injunction resulting in the unplanned

forced release of apprehended unlawfully employed illegal aliens back into the interior of the United States.

**CONCLUSION**

Accordingly, because Petitioners have failed in their burden of establishing that this Court has jurisdiction over their claims and that the four factors for injunctive relief operate in their favor, the Court should deny the requested injunction. Nieves-Márquez v. Puerto Rico, 353 F.3d 108, 120 (1st Cir. 2003).

Respectfully submitted,

By their attorneys,

MICHAEL J. SULLIVAN
United States Attorney

/s/ Frank J. Crowley
By: Frank J.Crowley
Special Assistant U.S. Attorney

/s/ Barbara Healy Smith
Barbara Healy Smith
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Dated: 8 March 2007

**CERTIFICATE OF SERVICE**

This is to certify that on March 8, 2007, I served upon Petitioners counsel in open court the a copy of the Defendants' Opposition to Motion for a Temporary Restraining Order, and that a corrected copy of this document will be filed March 9, 2007, through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).:

/s/ Barbara Healy Smith
Barbara Healy Smith
Assistant United States Attorney