

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW MEXICO**

MAITONY YOHANDRY CARDENAS BARRERA,

Petitioner,

v.

DORA CASTRO, Warden, Otero County Processing Center; MARY DE ANDA-YBARRA, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement; PATRICK J. LECHLEITNER, Senior Official Performing the Duties of the Director, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General, *in their official capacities,*

Respondents.

Civil Action No.: 1:25-cv-
00266-MLG-KRS

**PETITION FOR A WRIT
OF HABEAS CORPUS
PURSUANT TO
28 U.S.C. § 2241**

**PLAINTIFF'S MOTION FOR RECONSIDERATION OF
PETITIONER'S APPLICATION FOR PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241 AND
RECONSIDERATION OF PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE,
PRELIMINARY INJUNCTION**

Petitioner, Maitony Yohandry Cardenas Barrera (Petitioner), by and through undersigned files this motion respectfully requesting this Court to reconsider Petitioner's Petition for Writ of Habeas Corpus, initially filed on Friday, March 14, 2025, as well as reconsideration of Petitioner's Motion for Temporary Restraining Order, or, in the alternative, Preliminary Injunction, also filed on March 14, 2025.

Petitioner's Writ of Habeas Corpus pursuant to 28 U.S.C. § 2243 and motion for temporary restraining order seek to enforce 8 U.S.C. § 1254(a), which expressly commands that Temporary Protected Status (TPS) holders not be detained and that their orders of removal not be executed. 8 U.S.C. § 1254(a)(d)(4), 1254a(1)(A). *See also* 8 U.S.C. § 1254a(a)(5) (TPS statute provides no authority to "deny temporary protected status to an alien based on the alien's immigration status"); 8 U.S.C. § 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to "otherwise deportable" non-citizens).

Despite this unambiguous statutory command, Petitioner has now been detained by U.S. Immigration and Customs Enforcement (ICE) without a legal basis for 31 days.

On March 17, 2025, U.S. District Judge Matthew L. Garcia issued an Order Directing Service, citing to Petitioner's failure to satisfy Federal Rule of Civil Procedure 65(b)(1), which provides that "[t]he court may issue a temporary restraining order without written or oral notice to the adverse party only if" two conditions have been satisfied, including, (B) "the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." Exh. A, Judicial Order Directing Service, Pg. 1.

Page 2 of this Order indicates that in order to satisfy Rule 65(b)(1), Petitioner should "serve the Complaint for a Writ of Habeas Corpus", "the summons, the Application" and a copy of the Order, "on each of the individual defendants." *Id.* at Pg. 2. The Order instructs Petitioner to "file a certificate of service on the docket once this has been completed" and indicates that the Petitioner can also "move for reconsideration of the Application after complying with this order." *Id.*

On March 17, Petitioner mailed copies of the Complaint, the summons, and the application for a temporary restraining order via USPS priority mail but did not include a copy of the order as Petitioner became aware of the order afterwards. Exh. B. In Response to the Court's order, on March 19, 2025, Petitioner served all four documents listed on page 2 of the Order on each of the defendants via certified mail and filed a certificate of service on the court on March 19. Exh.

C, Petitioner certificate of service as filed electronically on the court docket (including proof of mail).

Petitioner now moves this court to reconsider the underlying application for relief and notes that no further service or notice is required – Defendants are aware of the TPS status of Petitioner and all requests for his immediate release in compliance with 8 U.S.C. § 1254 have thus far not been heeded. Moreover, between March 15 and March 20, 2025, multiple reports have been made public of the Administration removing Venezuelan men with final orders of removal to El Salvador despite a court order issued by U.S. District Judge James E. Boasberg under the auspices of an invocation of the Alien Enemies Act.¹

The federal statutes governing § 2241 habeas petitions, 28 U.S.C. § 2241 et seq., call for a “swift, flexible, and summary” judicial inquiry into the legality of an individual’s detention. *Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973) (citing 28 U.S.C. § 2243). Section 2243 provides that upon receiving a habeas petition, the court “shall forthwith award the writ” or issue an order to show cause to the petitioner’s custodians. 28 U.S.C. § 2243. At every stage in the proceedings, courts hearing habeas cases should administer the writ “with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Petitioner has already been detained in clear violation of federal law for more than one month. Based on the foregoing, Petitioner respectfully requests that this Court immediately reconsider the application for writ of Habeas Corpus and temporary restraining order or, in the alternative, preliminary injunction.

Dated: March 21, 2025

Respectfully submitted,

/s/Jennifer Babaie

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¹ See <https://apnews.com/article/trump-venezuela-el-salvador-immigration-dd4f61999f85c4dd8bcaba7d4fc7c9af> (March 17, 2025) and <https://www.politico.com/news/2025/03/21/james-boasberg-trump-administration-deportations-00003815> (March 21, 2025).

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(Appearing *pro hac vice*)

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