UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

SANTOS DAGOBERTO LÓPEZ-CANALES, Petitioner, v. JOHN FABBRICATORE, Field Office Director of Enforcement and Removal Operations, Denver, Colorado Field Office, Immigration and Customs Enforcement; Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; JUAN BALTASAR Warden of DENVER CONTRACT DETENTION FACILITY, Respondents.	Case No. 1:26-cv-1253 **PETITION FOR WRIT OF HABEAS CORPUS**

PETITIONER'S NOTICE OF MOTION FOR A TEMPORARY RESTRAINING ORDER

Moving Party: Petitioner-Plaintiff

Place: Hon.
United States District Judge

Relief Sought: Pursuant to Federal Rule of Civil Procedure 65(b), PetitionerPlaintiff respectfully moves the Court for a temporary restraining order[1] pending adjudication of his Petition for a Writ of Habeas Corpus and Complaint for Injunctive Relief.

[1] Pursuant to Fed. R. Civ. P. 65(b), a court may issue a TRO without notice to the opposing party if: "(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required."

Papers Submitted in Support: Memorandum of Law

Intent to Reply: Pursuant to Local Rule of Civil Procedure XXXX[5] Petitioner-Plaintiff respectfully requests the opportunity to respond to any responses filed by Respondents-Defendants to the instant motion.

Respectfully submitted,

DATED:

/s/ Evelyn Aimee De Jesus-Rodriguez

Counsel for Petitioner

The TRO can be time-limited.

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PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER

PRELIMINARY STATEMENT

Petitioner-Plaintiff Lopez Canales, ("Petitioner-Plaintiff" or "Lopez Canales") respectfully moves this Court for a temporary restraining order pending its adjudication of his Petition for Writ of Habeas Corpus and Complaint for Injunctive Relief. Specifically, Lopez Canales requests the Court to order Respondents-Defendants to cease any ongoing actions and refrain from taking any additional actions toward effectuating Petitioner-Plaintiff's removal from the United States until the Court has adjudicated his petition and complaint.

Petitioner incorporates by reference paragrapghs 1 to 5 from his Petition of Habeas Corpus filed on _____, before this court. ECF No. ____.

Because Lopez Canales is likely to succeed in his habeas petition, as well as to avoid the significant irreparable harm Lopez Canales would suffer if Respondents proceed with its current removal plans—which, upon information and belief, is could occur at any time— Lopez Canales requests the Court to issue an order restraining the Respondents-Defendants from further action at the present time.

NOTICE TO RESPONDENTS

Undersigned counsel affirms he intends to send, via email, a copy of the motion for a temporary restraining order ("TRO"), this memorandum of law, and a proposed order for granting the TRO upon the filing of this motion and in accordance with Fed. R. Civ. Proc. Rule 65(a)(1).

FACTUAL BACKGROUND

Lopez Canales incorporates and adopts by reference paragraphs 49 to 55 from the filed Petition for Habeas. ECF No. ___.

ARGUMENT

The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure are identical. Where a party requests a TRO that enjoins governmental action, the party must demonstrate that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of the preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, because Lopez Canales meets both the irreparable harm and likelihood of success prongs and because the requested relief is not overly burdensome on Respondents-Defendants, he merits such relief.

To the extent that the government argues there is a question regarding the Court's jurisdiction, it does not preclude this Court from exercising its inherent authority to issue emergent relief pending further briefing. "[A] federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002).

I. LOPEZ CANALES WILL SUFFER IRREPARABLE HARM IF HE IS REMOVED

A showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction. In *Winter v. Natural Resources Defense Council, Inc*, 555 U.S. 7 (2008), the Supreme Court described the balancing test for whether a preliminary injunction is appropriate. A court needs to examine whether the plaintiff is likely to succeed on the merits, whether the plaintiff is likely to suffer irreparable harm without the injunction, whether the balance of equities and hardships is in the plaintiff's favor, and whether an injunction is in the public interest.

Under this prong, a party seeking a TRO must show that but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the position they previously occupied.

Here, Lopez Canales satisfies the irreparable harm prong in three ways.

First, his allegations of constitutional violations permit a *per se* finding of irreparable harm. ("[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury.") Because violations of constitutional rights are presumed irreparable, *Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), the very nature of Lopez Canales' allegations satifies the requirement that it show irreparable injury. ("[An] *alleged* violation of a constitutional right . . . triggers a finding of irreparable harm.") (emphasis in original). In his petition and complaint, Lopez Canales raised specific allegations of violations of his Fifth Amendment right to due process, both substantive and procedural. *See* Pet. for Writ of Habeas Corpus. These allegations center on Respondents' power to, not only hold Petitioner in custody, but that they could deport him anywhere.

Second, Lopez Canales satisfies irreparable harm by demonstrating that but for this Court's granting of equitable relief, there is a substantial chance he cannot be returned to the position he previously occupied. If he is deported as a potential result of the upcoming hearing, he would not be able to return to the United States and assert his rights. There is a physical presence requirement so that Lopez Canales can effectively argue his right to be present in the United States. Since deportation will result in the loss of his right to pursue his Petition for cancellation of removal for certain non-legal permanent residents under 8 U.S.C. § 1229b(b)(1) based on the "exceptional and extremely unusual hardship" to his U.S. citizen children and spouse were he to be removed, he does face significant irreparable injury absent a TRO.

Third, Lopez Canales is likely to win on the merits of his claim that the government's detention of him and their revocation of his order of supervision is unlawful. Only individuals who are flight risks or dangers may be detained. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Lopez Canales is neither.

II. LOPEZ CANALES IS LIKELY TO SUCCEED ON HIS PETITION.

Having demonstrated a likelihood of irreparable harm, Lopez Canales must demonstrate a likelihood of success on the merits of his petition.

The Fifth Amendment of the Constitution guarantees that noncitizens receive adequate procedural protections in the course of any executions of the government's detention and removal authorities. *See, e.g.*, *Zadvydas*, 533 U.S. at 690. Such protections are flexible and guided by considerations for the "private interest that will be affected[,]" "the risk of an erroneous deprivation of such interest through the procedures used[,]" and "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Respondents' actions toward effectuating Petitioner's removal and the celebration of the upcoming hearing before immigration court on January 20th, 2026, without having his Petition of Habeas properly considered, create a substantial risk of an erroneous deprivation of Petitioner's core interest in life and liberty.

The Administrative Procedures Act (APA) provides that a court "shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the

bare bones" of federal statutes, such that the agencies are bound to follow their own "existing valid regulations." *United States ex rel. Accardi Shaugnessy*, 347 U.S. 260, 266, 268 (1954)[2]. Presently, Petitioner's detention is capricious, arbitrary and an abuse of discretion from DHS; ignoring Supreme Court precedent that forbid unreasonable and illegal indefinite detention of a noncitizen. *Id. Zadvydas, supra.*

In *Rombot*, the Court found that "[t]he Supreme Court has recognized that an 'alien may no doubt be returned to custody upon a violation of [supervision] conditions,' *Zadvydas*, 533 U.S. at 700, but it has never given ICE a carte blanche to re-incarcerate someone without basic due process protection." *Rombot,* 296 F. Supp. 3d at 389; *see also, Torres-Jurado v. Biden*, 2023 WL 7130898 at *4 ("Defendants' cursory, abrupt, and predetermined notice that Plaintiff must selfdeport within one month after permitting him to live in the United States pursuant to the ICE Stay for eighteen years fails to satisfy this fundamental constitutional right.").

In determining whether an agency action may be set aside by a reviewing Court, it must be determined whether the decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. §706(2)(A). The Court must also consider whether the

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[2] *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954), originated in the context of an immigration case and held that agencies are bound to follow their own rules that affect the fundamental rights of individuals, including self-imposed policies and processes that limit otherwise discretionary decisions. In *Accardi,* the court held that the Board of Immigration Appeals (BIA) must follow its own regulations in its exercise of discretion. *Id.* at 268. In *Morton v. Ruiz*, 415 U.S. 199, 235 (1974), the court struck down a Bureau of Indian Affairs benefits determination because it did not comply with procedures set forth in the agency's internal manual. The court explained that *Accardi* applies with particular force in those cases in which "the rights of individuals are affected," stating that "it is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required." *Id.* at 235; *see also Battle v. F.A.A*, 393 F.3d 1330, 1336 (D.C. Cir. 2005) *("Accardi* has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others."); *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("[T]he premise underlying the *Accardi* doctrine is that agencies can be held accountable to their own codifications of procedures and policies — and particularly those that affect individual rights.")

agency "examine[d] the relevant data and articulated a satisfactory explanation for its action including a rational connection between facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

III. A TRO WOULD NOT SEVERELY HARM THE GOVERNMENT OR PUBLIC INTEREST.

Lopez Canales merits a TRO because a TRO would not significantly impede the government or public interest. In inquiries concerning the government's efforts to remove a noncitizen, the government and public interest factors merge as the government is both the opposing litigant and public interest representative. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Here, temporarily restraining the Respondents from effectuating the upcoming hearing and Petitioner's removal would not be detrimental to the government's interests because the requested relief is temporary, narrowly tailored, and will only last pending the underlying Habeas petition. Rather, an order for the maintenance of the status quo may simply enable Respondents to fully brief the Petition without the time pressure of a looming hearing date. *See Torres-Jurado v. Biden*, 2023 WL 7130898 at *5 (Rejecting the government's argument that a stay of removal is in not in the public interest and reasoning that "it is Defendants' own actions, in granting the ICE Stay, that have occasioned the delay here. The brief delay caused by a temporary stay here does not interfere with the public interest when Plaintiff has been allowed to live in the United States for eighteen years without Defendants executing the final removal order."). Additionally, the government's interest in the adjudication of Mr. Lopez Canales' petition is further supplemented by its general, demonstrated interest in ensuring removals from the United States are safely carried out. *See Rosario v. I.N.S.*, 962 F.2d 220, 221 (2d Cir. 1992) (noting the public has an interest in the court "ensur[ing] that whatever compassionate conditions are written into law are carefully adhered to[.]").

IV. THE COURT SHOULD NOT REQUIRE LOPEZ CANALES TO PROVIDE SECURITY PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER.

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or a temporary restraining order 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." However, "Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This Court should do the same here.

CONCLUSION

Lopez Canales respectfully requests that the Court grant his motion for a temporary restraining order and maintain the status quo until this Court has an opportunity to assess Petitioner's underlying petition.

Respectfully Submitted,

/s/Evelyn Aimée De Jesús Rodríguez

DATED: March 25, 2026

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[PROPOSED] ORDER

Upon consideration of Petitioner's Motion for a Temporary Restraining Order, the Memorandum of Law in Support of the Motion, and his Petition for a Writ of Habeas Corpus ("Petition"), and together with the exhibits annexed thereto, **IT IS HEREBY ORDERED** that:

1. Pending consideration of all claims before this Court, Respondents ARE HEREBY RESTRAINED from transferring the Petitioner from the State of COLORADO;
2. Pending consideration, Respondents-Defendants ARE HEREBY RESTRAINED from moving SANTOS DAGOBERTO LOPEZ CANALES;
3. Pending consideration, Respondents ARE HEREBY RESTRAINED from detaining the Petitioner for the purposes of civil immigration detention;

4. Respondents are ORDERED to file a return as to why the Petition should not be granted by_____;
5. Petitioner shall have an opportunity to reply by_____;
6. The merits of the Petition shall be heard by the Court on_____;
7. It is further ORDERED that security is not required;
8. And such other and further relief as the Court may find appropriate;
9. Service of this Order shall be effected by Petitioner on the United States Attorney for the by electronic mail by ____am/pm on_____and shall constitute good and sufficient service.

IT IS SO ORDERED:

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DATED: _____,

_____
Hon.
United States District Judge