

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JESUS MORALES LOPEZ,)	
)	Case No.: 1:25-cv-3078
Petitioner,)	
)	
vs.)	
)	
JUAN BALTAZAR, Warden of Aurora)	
Contract Detention Facility;)	
ROBERT GUADIAN, Field Office Director,)	PETITIONER'S EMERGENCY
Denver Field Office of U.S. Immigration and)	MOTION FOR TEMPORARY
Customs Enforcement;)	RESTRAINING ORDER
TODD LYONS, Acting Director of U.S.)	
Immigration and Customs Enforcement;)	
KRISTI NOEM, Secretary of U.S.)	
Department of Homeland Security; and)	
PAMELA BONDI, Attorney General)	
of the United States, in their official capacities,)	
)	
Respondents.)	
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INTRODUCTION

1. Petitioner Morales Lopez, by and through undersigned counsel, respectfully moves this Honorable Court for an Emergency Temporary Restraining Order under the Court's inherent habeas authority, the All Writs Act of 28 U.S.C. § 1651(a), and Fed. R. Civ. P. 65(b), to preserve this Court's jurisdiction and prevent irreparable harm.

2. On October 1, 2025, Morales Lopez filed a Petition for Writ of Habeas Corpus challenging the legality of his continued detention.

3. On October 2, 2025, one day after seeking judicial review of his prolonged detention, the Aurora Immigration Court abruptly scheduled Morales Lopez for an Individual Hearing on **October 15, 2025, leaving only thirteen days' notice.** *See Notice of Individual Hearing, dated October 2, 2025, attached hereto as Exhibit A.*

4. If the immigration court proceeds on October 15, Morales Lopez risks being ordered removed or subjected to a final order before this Court can adjudicate his habeas petition. Such action would moot this case and extinguish the Court's jurisdiction.

5. Morales Lopez therefore seeks an emergency order temporarily restraining Respondents from conducting that hearing pending this Court's resolution of the habeas petition.

LEGAL STANDARD

6. To prevail on a temporary restraining order, a movant must show: (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in the movant's favor, and (4) an injunction is in the public interest. *M.G. through Garcia v. Armijo*, 117 F.4th 1230, 1238 (10th Cir. 2024). The final two factors "merge" when the government is the opposing party. *Denver Homeless Out Loud v. Denver, Colorado*, 32 F.4th 1259, 1278 (10th Cir. 2022).

7. Certain types of preliminary injunctions, such as injunctions that alter the status quo or require the nonmoving party to take some affirmative action, are disfavored. *State v. U.S. Env't Prot. Agency*, 989 F.3d 874, 883 (10th Cir. 2021).

ARGUMENTS

8. Morales Lopez seeks a temporary restraining order that does not require affirmative action from the nonmoving party and does not alter the status quo. Rather, granting Morales Lopez's requested relief would preserve the status quo that existed when this Court's jurisdiction was first invoked.

9. A temporary restraining order would simply pause removal proceedings with the immigration court to allow this Court to exercise its jurisdiction. The government would suffer no prejudice from a brief delay, while Morales Lopez faces the loss of constitutional rights and

potential deportation without judicial review. The equities thus weigh overwhelmingly in favor of immediate relief.

A. Likelihood of Success on the Merits

10. Morales Lopez's habeas petition presents the same legal question recently decided in *Mayo Anicasio v. Kramer*, No. 4:25-cv-3158 (D. Neb. Aug. 14, 2025), where the court held that detention under the automatic-stay provision of 8 C.F.R. § 1003.19(i)(2) violates both the Fifth Amendment and the Immigration and Nationality Act. The court ordered the petitioner's immediate release, concluding that (1) the regulation is unconstitutional as applied, (2) it violates procedural and substantive due process, and (3) it is *ultra vires* of the statutory authority Congress delegated to the Attorney General. *Mayo Anicasio v. Kramer*, No. 4:25-cv-3158 (D. Neb. Aug. 14, 2025).

11. The automatic stay provision violates procedural due process under *Mathews v. Eldridge*, 424 U.S. 319 (1976), because Morales Lopez has a significant interest to be free from detention, there is a risk of erroneous error in allowing the losing party before the Immigration Judge to nullify a release order without any factual showing or neutral review, and any interest the government has in Morales Lopez's continued detention is minimal because an Immigration Judge already determined that Morales Lopez is not a danger to the community or a flight risk.

12. The automatic stay provision violates substantive due process because it allows for imprisonment in contravention of the order of a neutral factfinder without any special justification or compelling government interest.

13. Morales Lopez's ongoing detention—despite an Immigration Judge's determination that bond ensures his appearance—likewise lacks any special justification and therefore offends the Fifth Amendment.

14. The automatic stay provision is *ultra vires* because it allows the Department of Homeland Security to unilaterally override an Immigration Judge's bond order. In doing so, they exceed the authority that was delegated to the Attorney General by Congress.

15. While *Mayo Anicasio* arose in the District of Nebraska, its reasoning follows the growing line of federal courts rejecting 8 C.F.R. § 1003.19(i)(2) as unconstitutional or *ultra vires*, including *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004), *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D.N.J. 2003), *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E. Mich. 2003), and *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446, 450 (D. Conn. 2003).

16. Morales Lopez is detained solely under a regulation multiple federal courts have deemed unconstitutional and beyond statutory authority. Because his case presents the same factual posture and legal question, and no material distinction exists, Morales Lopez has a strong likelihood of success on the merits of his habeas petition.

B. Irreparable Harm

17. A plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain. *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 356 F.3d 1256 (10th Cir. 2004). Federal courts have also held that the loss of opportunity for judicial review itself constitutes irreparable harm. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

18. If the Aurora Immigration Court proceeds with a final Individual Hearing, Morales Lopez would face irreparable harm.

19. The abrupt scheduling of an Individual Hearing only one day after Morales Lopez filed his Petition for Habeas Corpus strongly suggests retaliation for protected legal activity.

Retaliation for seeking judicial relief constitutes irreparable injury because it deters the exercise of constitutional rights. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976).

20. If Morales Lopez is forced to move forward on only thirteen days' notice, he could lose everything that matters most—his ability to remain with his children, to raise them, and to continue building his life here. The outcome of his Individual Hearing will determine whether his family stays whole or is permanently divided.

21. With the gravity of this outcome, it does not accord with principles of due process to be heard in a meaningful time and manner to have less than two weeks to prepare. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

22. Removal before review constitutes a form of irreparable injury because there is no effective way to redress the harm after deportation. Even if he is not immediately deported, being forced through a retaliatory hearing while detained inflicts emotional and constitutional injury that cannot be compensated later. Once the hearing occurs, that deprivation cannot be undone.

23. When justice is rushed and the opportunity to be heard in a meaningful manner is reduced to a formality, the process itself becomes the punishment.

C. Balance of Equities and the Public Interest

24. Where a constitutional right hangs in the balance, that right usually trumps any harm to the defendant. *See Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 806 (10th Cir. 2019). The administrative burden on Respondents of pausing or rescheduling one immigration hearing is minimal compared to the irreparable constitutional and human harm Morales Lopez faces if the Court does not intervene.

25. Respondents' only potential hardship is delay—a modest and temporary one. They remain fully empowered to pursue the removal case once this Court resolves the pending habeas petition.

26. By contrast, Morales Lopez faces the immediate threat of being compelled to defend his very right to remain with his children in the United States with only thirteen days to prepare—a timetable that makes meaningful preparation impossible. When Morales Lopez faces permanent separation from his children and the loss of everything he has built in the last 20 years, such haste offends the most basic notions of due process.

27. Proceeding with that hearing could moot this Court's jurisdiction, cause his unlawful removal or prolonged detention, and extinguish his constitutional due-process protections.

28. The public has no interest in seeing an individual's liberty curtailed through a retaliatory hearing designed to preempt federal oversight. To the contrary, ensuring that executive agencies act within statutory and constitutional bounds promotes confidence in the rule of law—a core public value that outweighs administrative efficiency.

29. In sum, the equities and the public interest both favor maintaining the status quo until this Court can adjudicate Morales Lopez's habeas petition.

CONCLUSION

30. The timing of Morales Lopez being given notice of an Individual Hearing one day after he sought this Court's protection, undermines the fairness of this process as it threatens to render the Court's review meaningless before it begins. A temporary restraining order is therefore necessary to preserve the status quo, protect this Court's jurisdiction, and ensure Morales Lopez's claims are decided by law rather than retaliation or haste.

31. *Mayo Anicasio v. Kramer* and the growing line of cases rejecting 8 C.F.R. § 1003.19(i)(2) confirm that Morales Lopez's detention is unconstitutional, ultra vires, and antithetical to the most basic principles of due process.

32. The relief Morales Lopez seeks is modest—a temporary restraining order that preserves the Court's power to decide the legality of his detention before it is rendered moot. The harm he faces is profound and irreversible: the loss of liberty, the loss of due process, and the loss of meaningful judicial review.

33. Accordingly, Morales Lopez asks this Honorable Court **to issue an immediate temporary restraining order prohibiting Respondents from conducting the Individual Hearing on October 15, 2025**, or taking any action to alter Morales Lopez's custody or removal posture pending this Court's resolution of the habeas petition.

34. Morales Lopez respectfully requests **that the Court direct Respondents to respond on or before October 13, 2025**, or such earlier date the Court deems appropriate, given the imminent October 15, 2025, Individual Hearing.

Dated this 10th day of October 2025.

Respectfully submitted,

/s/ Skylar M. Larson

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2025, I electronically filed the foregoing **Emergency Motion for Temporary Restraining Order and Attachments** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:


Leslie Schulze
Assistant United States Attorney
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Tel: (303) 454-0131
Email: Leslie.schulze@usdoj.gov

/s/ Skylar M. Larson
Skylar M. Larson, Esq.

ATTORNEY FOR PETITIONER

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
AURORA IMMIGRATION COURT

LEAD FILE: 
IN REMOVAL PROCEEDINGS
DATE: Oct 2, 2025

TO: Skylar M. Larson, Esq.
Larson, Skylar Madison
8275 E 11th Ave # 200176
Denver, CO 80220

RE:  MORALES-LOPEZ, JESUS

Notice of In-Person Hearing

Your case has been scheduled for a INDIVIDUAL hearing before the immigration court on:

Date: Oct 15, 2025
Time: 08:30 A.M. MT
Court Address: 3130 N. OAKLAND ST., AURORA, CO 80010

Representation: You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> is a list of free legal service providers who may be able to assist you.

Failure to Appear: If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

Change of Address: The court will send all correspondence, including hearing notices, to you based on the most recent contact information you have provided, and your immigration proceedings can go forward in your absence if you do not appear before the court. If your contact information is missing or is incorrect on the Notice to Appear, you must provide the immigration court with your updated contact information within five days of receipt of that notice so you do not miss important information. Each time your address, telephone number, or email address changes, you must inform the immigration court within five days. To update your contact information with the immigration court, you must complete a Form EOIR-33 either online at <https://respondentaccess.eoir.justice.gov/en/> or by completing the enclosed paper form and mailing it to the immigration court listed above.

Internet-Based Hearings: If you are scheduled to have an internet-based hearing, you will appear by video or telephone. If you prefer to appear in person at the immigration court named above, you must file a motion for an in-person hearing with the immigration court at least fifteen days before the hearing date provided above. Additional information about internet-based hearings for each immigration court is available on EOIR's website at <https://www.justice.gov/eoir/eoir-immigration-court-listing>.

In-Person Hearings: If you are scheduled to have an in-person hearing, you will appear in person at the immigration court named above. If you prefer to appear remotely, you must file a motion for an internet-based hearing with the immigration court at least fifteen days before the hearing date provided above.

For information about your case, please call 1-800-898-7180 (toll-free) or 304-625-2050.

The Certificate of Service on this document allows the immigration court to record delivery of this notice to you and to the Department of Homeland Security.

CERTIFICATE OF SERVICE

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DATE: 10/2/25 BY: COURT STAFF GB
Attachments:[] EOIR-33 [] Appeal Packet [] Legal Services List [] Other NH

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অনলাইনে নোটিশ পড়ার জন্য এই পৃষ্ঠার কোডটি স্ক্যান করতে স্মার্টফোনের ক্যামেরা ব্যবহার করুন

सूचना अनलाइनमा पढ्न यस पृष्ठमा कोड स्क्यान गर्न स्मार्टफोनको क्यामेरा प्रयोग गर्नुहोस्।

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