

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martinez**

Civil Action No. 25-cv-3078-WJM-KAS

JESUS MORALES LOPEZ

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden
of the Aurora Contract Detention Facility, et al.

Respondents.

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Morales Lopez, by and through undersigned counsel, respectfully moves this Honorable Court for a Temporary Restraining Order under the All Writs Act of 28 U.S.C. § 1651(a), Fed. R. Civ. P. 65(b), and D.C.COLO.LCivR 65.1(a), pending the adjudication of his Petition for Writ of Habeas Corpus, ECF No. 1.¹ Morales Lopez moves the Court for an Order for his immediate release upon reposting of the amount in the Immigration Judge's Order, dated August 14, 2025. *See* ECF No. 1.

The Court should grant Morales Lopez's request because he is likely to succeed on his Petition underlying the instant action and because he continues to anguish two (2) months longer in conditions this District has recognized as "more akin to incarceration than civil confinement,"

¹ Although Fed. R. Civ. P. 65(b) and D.C.COLO.LCivR 65.1(a) expressly exempt motions for temporary restraining orders from the conferral with opposing counsel requirement, undersigned counsel nevertheless contacted Respondents' counsel on October 19, 2025, as a professional courtesy prior to the filing of this Motion on October 20, 2025. Undersigned counsel received an automated email that Respondents' counsel was furloughed and accordingly forwarded the courtesy notification to the directed contacts on the morning of October 20, prior to filing the instant TRO. Additionally, a failure to confer with Respondents was not a reason for this Court's denial of Morales Lopez's request for emergency temporary restraining order. *See* ECF No. 13.

and separated from his wife and 4 USC children that he is the sole provider for. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024) (holding that “Petitioner has been detained for over 30 months under conditions another court in this District has recognized as ‘more akin to incarceration than civil confinement.’ *Daley v. Choate*, No. 22-CV-03043-RM, WL 2336052, at *4 (D. Colo. Jan. 6, 2023)).

LEGAL STANDARD FOR TRO

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).

Where a party seeks a “disfavored” preliminary injunction, the Tenth Circuit requires the moving party to make a *strong* showing that the likelihood-of-success-on-the-merits factor and the balance-of-harms factors tilt in his favor. *Free the Nipple—Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 797 (10th Cir. 2019) (emphasis added). A disfavored injunction may exhibit any of three (3) characteristics: (1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win. *Id.*

ARGUMENTS

Morales Lopez seeks a disfavored preliminary injunction. However, his requested relief should be granted because he is *more* than likely to succeed on the merits, and he is suffering irreparable injury incarcerated and separated from his 4 USC children he financially provides for after an Immigration Judge already determined he was not a danger to community or flight risk.

A. Likelihood of Success on the Merits

Morales Lopez is more than likely to succeed on the merits of his claim that he is unlawfully detained under the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) in violation of his substantive and procedural right to due process because in doing so, this Court would be following other courts who have “done the hard work” in analyzing the statute.

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).

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) (“The [automatic stay] procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor.”), *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).

The automatic stay provision violates Morales Lopez’s procedural right to due process. Morales Lopez has a significant interest at stake. Morales Lopez is held in incarceration-like conditions separated from his family that he is the sole provider for. There was a high risk of deprivation of Morales Lopez’s liberty interest through the procedures used in this case because despite a neutral decision-maker finding a bond was warranted, the automatic stay provision

allowed DHS, the party who lost its bond argument, to unilaterally deprive Morales Lopez of his liberty.

The automatic stay provision additionally violates Morales Lopez's right to 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. Morales Lopez's ongoing detention—despite an Immigration Judge's determination that a bond will ensure his appearance—likewise lacks any special justification.

Morales Lopez argued for these same reasons in his Emergency Temporary Restraining Order dated October 10, 2025, that he was likely to succeed on the merits of his Petition. ECF No. 10. As noted by this Honorable Court in denying Morales Lopez's Emergency TRO, "Respondents do not argue in their Response that Morales Lopez is unlikely to prevail on the merits of this habeas action. (See generally ECF No. 12.)" ECF No. 13. In failing to substantively respond to Morales Lopez's likelihood-to-succeed prong, the government's ability to demonstrate a continued interest in detaining Morales Lopez is lessened and should weigh in favor of granting Morales Lopez's requested relief.

The government's interest in the continued detention of Morales Lopez, one of the least dangerous individuals, in contravention of the order of a neutral factfinder, does not outweigh his liberty interest at stake. **Because his case presents the same factual posture and legal question, and no material distinction exists between his case and other district courts that have already considered this issue, Morales Lopez makes a very strong case for being likely to succeed on the merits of his underlying Petition for Writ of Habeas Corpus, ECF No. 1.**

B. Irreparable Harm

Despite an Immigration Judge making an individualized determination that Morales Lopez is not a danger to the community or a flight risk, he continues to languish in jail-like conditions.

See Daley v. Choate, No. 22-CV-03043-RM, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023) (describing civil detention conditions akin to incarceration-like conditions). 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). There is no question Morales Lopez is suffering irreparable harm.

Morales Lopez is the main financial provider for his wife and 4 USC children. ECF No. 1. Each day he is detained, his family experiences increased financial, caregiving, and emotional burdens. ECF No. 1. He has been separated from them for over three (3) months—two (2) of those were beyond when the Immigration Judge agreed with him.

Moreover, federal courts have long recognized that the infringement of a constitutional right is an irreparable injury. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). Morales Lopez has satisfied the second requirement that but for injunctive relief by this Court, the infringement on his Fifth Amendment rights will continue.

C. Balance of Equities and the Public Interest

A movant must show that the harm they suffer outweighs any harm to the opposing party, and, if issued, the injunction would not adversely affect the public interest. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024). These two factors merge where the government is the opposing party. *Id.*

Respondents would not be injured in enforcing the Immigration Judge's Order as they previously had a chance to argue before a neutral arbitrator their positions and an Immigration Judge agreed with Morales Lopez after reviewing the evidence and hearing arguments that he is not a danger to the community or a flight risk.

Furthermore, the public interest would benefit from a grant of this Temporary Restraining Order because Morales Lopez's continued detention is in violation of his Fifth Amendment rights. *See Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005, 1017 (C.D. Cal. 2020) ("[T]he public interest benefits from a preliminary injunction that expedites a bond hearing to ensure that no individual is detained in violation of the Due Process Clause."). This is particularly so given the patently harsh conditions Morales Lopez continues to be subjected to, as outlined above.

For these reasons, this Honorable Court should find that the balance of equities and public interest factors favor a preliminary injunction for Morales Lopez's immediate release in accordance with the Immigration Judge's Order dated August 14, 2025.

CONCLUSION

This Honorable Court should conclude that Morales Lopez has made a strong showing that he is likely to succeed on the merits and that the automatic stay provision violates his constitutional right to Due Process and that his continued detention and deprivation of liberty separated from his wife and 4 USC children who are financially dependent on him, weigh in favor of granting his immediate release in accordance with the Immigration Judge's bond order dated August 14, 2025.

Dated this 20th day of October 2025.

Respectfully submitted,

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2025, I electronically filed the foregoing **Motion for Temporary Restraining Order** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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