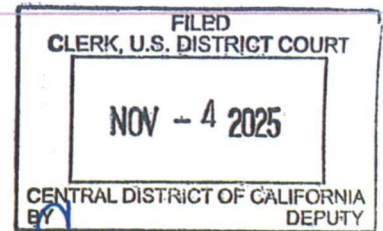


**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**



IN THE MATTER OF

**ADRIAN GONZALEZ YANES
PLAINTIFF.**

CASE NO:5:25-CV-02647- odw (pc)

-VS-

**DEPARTMENT OF HOMELAND SECURITY
ET.al
DEFENDANT .**

MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER

Here came the Petitioner in the above caption case, Acting without Aide of Counsel and Pursuant to Federal Rules of Civil Procedure, hereby move this Honorable Court to Enter a ruling of Motion for Emergency Temporary Restraining Order the favor of the Plaintiff.

Pursuant to Rule 65 to the Federal Rules of Civil Procedure, a court may issue a temporary restraining order without notice to the adverse party if it find that specific in motion ' clearly show '' immediate irreparable harm and the movant's attorney certifies that efforts at notice have been made. Federal Rules of Civil Procedure 65.

LEGAL STANDARD 1

The analysis for a temporary restraining order is substantially to that of a preliminary injunction. *Stuhlbarg Inten. Sales, Inc. V. John D. Brush & Co., Inc* 240 F. 3d 832, n.7 (9th Cir.2001). A preliminary injunction is ' an extraordinary remedy that may only be awarded upon a clear showing that the Petitioner is entitles to such relief'' *Winter v. Natural Res. Def. Council, Inc.* 555 U.S 7, 22 (2008) .To obtain a preliminary injunction, {2021 U.S Dist. LEXIS 4} a Petitioner must establish four elements : (1) a likelihood of success on the merits, (2) that the Petitioner will likely suffer irreparable harm in the absence of preliminary relief (3) that the balance of equities tips in its favor, and (4) that the public interest favors an injunction'' *Wells Fargo & Co. v. ABD Ins. & Fin. Servs.. Inc* 758 F. 3d 1069, 1071 (9th Cir. 2014), as amended (March. 11, 2014) (citing *Winter*, 555 U.S 7 20, 129 S. Ct. 365 172 L. Ed 2d 249 (2008)). A preliminary injunction may also issues under the serious question test. *Alliance for Wild Rockies v. Cottrell*,. 632 F. 3d 1127, 1134 (9th Cir. 2011) (affirming the continued viability of this doctrine post- *Winter*)., According to this test., a Petitioner can obtain a preliminary injunction by demonstrating '' that serious question going to the merits were raised and the balance of hardships tips sharply in the Petitioner favors.

LEGAL STANDARD 2

Federal Rule of Civil Procedure 65 (b) governs the issuance of a TRO. ‘The legal standard for TRO is substantially identical to the standard for a preliminary injunction. *Facebook, Inc v. BrandTotal Ltd.*, 499 F. supp. 3d 720, 732 (N.D. Cal. 2020) . To obtain injunction relief, the moving party must show;(1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to moving party in the absence of preliminary relief ;(3) that the balance of equities tips in favor of moving party; and that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S 7, 20 (2008). Generally, a TRO is ‘an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief . The moving party has the burden of persuasion. *Hill v. McDonogh*, 547 U.S 573, 584 (2006). The third and fourth factors, harm to the opposing party and public interest, merge when the Government is the opposing party ‘ *Nken v. Holder*, 556 U.S. 418 (2009).

The Ninth Circuit has articulated an alternative ‘ sliding scale ‘ approach pursuant to which the first and third Winter factors are analyzed on a continuum; under such standard, a weaker showing on the merits, combined with a stronger demonstration on the balancing test, might warrant preliminary injunction relief, assuming the second and fourth Winter elements are met . *Alliance for the Wild Rockies v. Cottrell*, 632 F 3d. 1127, 1131-1135 (9th Cir. 2011) . Under this sliding scale ‘ method the movant need only raise ; serious question going to the merits, but the balance of the hardship must tip ‘ sharply in the movant favor .Id at 1131-1132; see also *Farris v . Seabrook*, 677 F 3d 858, 864 (9th Cir. 2012).

Not in Accordance with Law

Agencies Must Follow Their Own Regulations

It is contrary to law for an agency to disregard its own regulation and policies. See *Nat’l Ass’n of Home Builders v. Norton*, 340 F 3d 835 , 852 (9th Cir. 2003) ; *Wallace v. Christensen* , 802 F 2d 1539, 1552 n 8.(9th Cir. 1986) (an agency is bound by its own regulation so long as they remain in force.) As the District of Columbia has explained:

In a series of decisions, the Supreme Court has entertained challenges to agency action that failed to conform to agency regulation. *SEC v. Chenery Corp.*, 318 U.S 80, 87-88 (1943), the Court held that an agency is bound to standards by which it professes its action to be judged . In *Accardi*, a case involving a habeas challenge to the denial of suspension of deportation, the Court objected to agency ‘s failure to exercise its own discretion contrary to existing valid regulation.

Lopez v. Fed Aviation Admin., 318 F. 3d 242, 246 (D.C Cir 2003) , as amended (Feb 11, 2003) (quoting *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 , 268, (1954) (parallel citations omitted) . Moreover ‘ a court’s duty to enforce an agency regulation, while most evident when compliance with the regulation that are not so required ‘ ‘ Id at 247 (alteration omitted) (quoting *United States v. Caceres* 440 U.S 741, 749 (1979)).

The Ninth Circuit has affirmed that pursuant to the Accardi doctrine, an administrative agency is required to adhere to its own internal operating procedures. *Church of Scientology of California v. United States*, 920 F. 2d 1481, 1487 (9th Cir. 1990) see also *United States v. Nixon*, 418 U.S. 683, 696 (1974); *Arizona Grocery Co. v. Atchison T. & S. F. Ry. Co.*, 284 U.S. 370.

389 (1932). Courts have framed the obligation for an agency to follow its own regulation as deriving from 706 (2) (A) or other APA provisions. See eg., *Suncor Energy (U.S.A) Inc. V United States Env't Prot. Agency.*, 50 F. 4th 1339, 1352 (10th Cir. 2022)(holding that EPA action violated 706 (2) (A) because it ignored the agency's regulatory definition of facility) ; *Kidd v. Mayorkas*, 734 F. Supp. 3D 967, 983-984 (C.D Cal. 2024) (ICE policy of warrant less " knock and talk " violated agency's regulation and thus 706 (2) (A). Agencies must adhere to internal procedures designed to provide protection to individuals. *Morton v Ruiz*, 415 U.S. 199, 235 (1974) (where the right of individuals are affected, it is incumbent upon agencies to follow their own procedures. See also *Lopez*, 318 F. 3d at 247; *Beshir v. Holder*, 853 F. Supp. 2D 1, 11 (D.D.C 2011) (DHS Secretary's discretion to issues procedures rule pausing processing of adjustment of status application limited by regulation requiring adjudication in certain time frame ,

ANALYSIS

A. Plaintiff is likely to Succeed in the Argument that the arrest and detention was record was Unlawful.

Under the APA, a court shall hold unlawful and set aside agency action this is Unconstitutional an abuse of discretion, or otherwise not in accordance with law .

Plaintiff was transfer without no notice and no reason to various location . To said in legal terms petitioner was kidnap by(**D.H.S**) along with other detainees . All communication was block from contacting our family . Plaintiff was taken on a plane and was boarded and shackle down from top to bottom plaintiff and detainees was not properly feed . Petitioner states don't know what illegal activities or injustice system the Department of Homeland Security is operated . Plaintiff is willing to Testify or challenge the Department of Homeland Security in a court of law.

Agency – initiated Termination is governed by 8 C.F.R 214. 1 (d) which enumerates circumstance that result in termination :

Defendant do not argue that any of these criteria are present here

A condition of a none immigrant.'s admission and continued stay in the United States is obedience to all laws of United States jurisdiction which prohibit the commission of crimes of violence and for which a sentence of more than one year imprisonment may be imposed. A non immigrant's conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than one year imprisonment may be imposed (regardless of whether such

Congress has granted the Secretary of State and Consular officers Broad discretion to revoke non immigrant visas and such a determination can only be challenge in removal proceedings. 8 U.S.C 1201(i). But the State Department's own internal policy directs consular officers that under no circumstance should you when the individuals is in the United States . See 9 FAM 403. 11- 3 (B) Since Petitioner was already lawfully admitted to the United States his admissibility should have no bearing on his continued lawful presence and Defendants have identified no authority that permits them to detained petitioner without administrative warrant ICE's own internal policy guidance confirms that the agency action was unlawful and afoul violates petitioner protected rights .

Arbitrary and Capricious for Lack of Explanation

Agency action considered arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem , offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to difference in a view or the product of agency expertise . Motor Vehicle Mfrs. Ass'n of U.S Inc v. State Farm. Mut Auto Ins. Co., 463 U.S. 29 , 43 (1983). As the Ninth Circuit has explained, the critical factor in Motor Vehicle was that the agency submitted no reasons at all for its decision McFarland v. Kempthorne. In this instance , Respondent have failed to meet the general administrative-law requirement that an agency articulate a satisfactory explanation for its action. ' Hernandez v. Garland 52 F 4th 757, 768 (9th Cir. 2022) (quoting State Farm, 463 U.S at 43). Indeed, Defendant has failed to suggest any lawful grounds as to why its action here is lawful under the APA. Motor Vehicle, 463 U.S at 50. Respondent 'submission that they ; do not concede that Yanes has demonstrated a likelihood of success on the mertis on his APA claim ; but cannot defend its because 'Respondent have not completed [fact finding] efforts in time to respond to Yanes 's motion is inadequate under governing law. Indeed , Respondent failure to provide a single plausibly lawful explanation for its action ---- an explanation reasonably grounded somewhere in the statutory scheme--- is the exact circumstance contemplated by the arbitrary and capricious standard. Teaches that even when reversing a policy after an election, an agency may not simply change

An agency need not consider every conceivable alternative , but when its not writing on a blank slate' its must consider the impact of its action on vested reliance interest, especially in the immigration context where individuals make time-bounded commitment to allow them to manage and take care of there business .

Accordingly ,Plaintiff is also likely to prevail on the claim that the agencies action is arbitrary and capricious for failing to articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made ' . Motor Vehicle 463 U.S at 43.

B. Remaining TRO Factors

1. Irreparable Harm

Plaintiff faces several forms of irreparable harms as the result of this action. While Defendant have placed Plaintiff in removal proceedings , he faces the prospect of detention , removal proceedings, and ultimately removal because of this unlawful action . Plaintiff's fears are not speculative , as DHS's own public- facing guidance states that a person whose is faces the following consequence;

1. Plaintiff loses all asset and property.
2. Plaintiff cannot re-enter the United States .
3. Immigration and Customs Enforcement (ICE) agents may investigate to confirms the departure of the Plaintiff. Etc .
4. Plaintiff dependents will suffer hardship due to Plaintiff is the main provider and the bread winner for house household.
5. Plaintiff has 90% of plaintiff resides in the U.S and have U.S Citizen wife and children.

Could only mean the plaintiff no longer maintain lawful status in the United States otherwise why the need to confirm their departure. Whats is more, plaintiff asserts they are suffering extreme emotional stress and reports feelings overwhelming guilt grief and anxiety as well as great depression and hopelessness.

Turning now to examine the irreparable harms in more detail, the court begins by considering the interaction between the threats of removal and loss of plaintiff's Removal is not by itself an irreparable harm, in part because removal is in at least some instance reversible . See *Nken*, 556 U.S at 430. However in this case the ordinary harms of removal would compound the other harms plaintiff faces by effectively eliminating his ability to operated all his business. Placing his career trajectory in jeopardy . Its not something that plaintiff can back instantly this logistic business is a fundamental art to build.

Further ,Plaintiff describes severe psychological distress . I feel overwhelming guilt , grief anxiety great depression and hopelessness. The Ninth Circuits found that emotional distress, depression and anxiety constitute irreparable harms under certain circumstance. *Chalk v. U.S District. Ct Cent. Dist of California*, 850 F 2d 701, 709- 710 (9th Cir 1988) . In *Chalk*, the plaintiff was a teacher of hearing- impaired children. After he developed AIDS, the school broad removed him from the classroom and assigned him to administrative tasks despite his presentation of evidence that his presence in the classroom posed no danger to the students . Id at 703. The Ninth Circuits granted a preliminary injunction, finding that plaintiff injury was emotional and psychological- and immediate. Such an injury cannot be adequately compensated for by a monetary award after trial .

While the emotional distress normally suffered upon the loss of a job will not support the issuance of preliminary relief, the emotional and psychological distress triggered by the loss of one position, living circumstance, and future employment and propriety prospect can be both unusual and extreme. Moreover as other courts have commented, the fear of removal is significant and not ill-founded in these cases.

Aliens facing prolonged detention while their petition for review of their removal orders are pending are entitled to a bond hearing before a neutral immigration judge {2021 U.S. Dist. LEXIS 5} *Casas-Casrillon v. Department of Homeland Security*, 535 F.3d 942 (9th Cir. 2008). Federal District Courts have habeas jurisdiction under 28 U.S.C. 2241 to review such bond hearing determinations for constitutional claims and legal error. “*Singh v. Holder* 638 F.3d 1196, 1200 (9th Cir. 2011) (citations omitted). Given the substantial liberty interests at stake in Casas bond hearings, the government must prove by clear and convincing evidence that continued detention is justified. ‘Id. Factual findings at such hearings are reviewed for clear error and legal conclusion are reviewed de novo. See generally *Hoyle v. Ada County*, 501 F.3d 1053, 1059 (9th Cir. 2007) (noting the standards that apply for petitions under Section 2241).

8. Plaintiff doesn't have no attempts to flee country due too have a lot of asset and responsibilities here in the U.S and have U.S Citizens kids that need support as a father and a provider.

STATUTORY VIOLATIONS

SUBSTANTIVE DUE PROCESS VIOLATION

Petitioner's continued detention violates Petitioner's rights to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

The Due Process Clause of the Fifth Amendment requires that the deprivation of the Petitioner's liberty be narrow tailored to serve a compelling.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Under the circumstance here, Petitioner is not required to exhaust his administrative remedies. There is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court, but such exhaustion is generally required as a prudential matter. Nevertheless, court need not require a party to exhaust all administrative remedies when (1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial.

This Court Has Authority to Order Petitioner's Release to Vindicate Petitioner's Fifth Amendment Rights, such Relief is Appropriate Here.

While the circumstance of this case is still novel and emerging , the Court's authority to order Petitioner's release to ensure Petitioner's constitutional rights are protected is not . " Federal Courts posses whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights. *Stone v. City & Cnty Of San Francisco*, 968 F. 3d 850,861(9th Cir. 1992). As result [w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison's population. *Brown v . Plata*, 563 U.S. 493, 511 (2011). Court have regularly exercise this authority to remedy constitutional violations caused by overcrowding. *Duran v. Elrod*, 713 F. 2d 292, 297-98(7th Cir 1983), cert. Denied 465 U.S 1108 (1984)(concluding that the court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

PRAYER FOR RELIEF

Wherefore: Petitioner prays that this Honorable Court to grant the following relief

1. Declaring that petitioner contained detention is not authorized by the (D.H.S) and / or violates the Fifth Amendments .
2. Enter preliminary and permanent injunctive relief enjoining Respondents from futher unlawful detention of Petitioner .
3. Award Petitioner attorney's fee and cost under the Equal Access to Justice Act ('EAJA') as amended 5 U.S.C 504 snd 28 U.S.C 2412 on any other basis justified under law :and .
4. Grant any other and further relief that this Court deems just and proper.

I affirm , under penalty of perjury , that the foregoing is true and correct . _____

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ADRIAN GONZALEZ YANES

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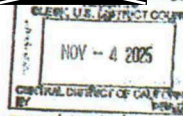
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