

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

JOSUE DAVID SARA VIA SARA VIA,

Petitioner

vs.

HECTOR C. RAMIREZ, et al.,

Respondents.

Case no. 5:25-cv-184

PETITIONER’S MOTION FOR A PRELIMINARY INJUNCTION

On July 24, 2025, Petitioner, Mr. Josue David Saravia Saravia (“Mr. Saravia”), was granted a \$3000 bond by the Honorable Kevin Terrill, in the Pearsall, Texas Immigration Court, finding that Mr. Saravia was neither a flight risk nor a danger to the community. Despite that bond order, Respondents, chiefly the Department of Homeland Security (“DHS”), invoked the automatic stay provision provided at 8 C.F.R. § 1003.19(i)(2) by filing a handwritten EOIR-43 Notice of ICE Intent to Appeal Custody Redetermination with the Board of Immigration Appeals (“BIA”) to keep Mr. Saravia detained while it appealed the Immigration Judge’s decision to the BIA. Because every federal court to review the constitutionality of the automatic stay provision provided at 8 C.F.R. § 1003.19(i)(2) has ruled that the regulation violates due process, Mr. Saravia, seeks a preliminary injunction for his immediate release pending his habeas corpus petition.

ARGUMENT

The Court should enter a preliminary injunction ordering Mr. Saravia’s immediate

release from DHS detention because: (1) Mr. Saravia is likely to succeed on the merits of his claims; (2) Mr. Saravia is likely to suffer irreparable harm absent an injunction; (3) the balance of equities tips in Mr. Saravia's favor; and (4) a preliminary injunction would serve the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 452 (5th Cir. 2014). District courts have "wide discretion" in granting preliminary injunctions. *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 558 (5th Cir. 1987). "[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and on evidence that is less complete than a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). For example, a district court need not hold an evidentiary hearing before issuing a preliminary injunction, particularly where the "defendants do not point to any convincing factual disputes." *Dixon*, 835 F.2d at 558.

I. Mr. Saravia Is Likely To Succeed On The Merits Of His Due Process Claims

Here, there is no dispute that Mr. Saravia was granted a \$3000 bond by the Honorable Kevin Terrill, in the Pearsall, Texas Immigration Court on July 24, 2025, and that despite that order he remains detained because that same day that bond was granted, the DHS invoked the automatic stay provision provided at 8 C.F.R. § 1003.19(i)(2) by filing a handwritten EOIR-43 Notice of ICE Intent to Appeal Custody Redetermination with the BIA to keep Mr. Saravia detained while it appealed the Immigration Judge's decision to the BIA. These facts are not in dispute.

However, a case law search did not reveal a single court that has upheld DHS implementation of the automatic stay provision at § 1003.19(i)(2). Rather, the case law

reveals that each court to reach this issue has ruled that the automatic stay provision at § 1003.19(i)(2) violates due process. *See, e.g., Francisco Javier Platas Arcos, v. Kristi Noem, et al.*, No. 4:25-CV-04599, 2025 WL 2856558, at *3 (S.D. Tex. Oct. 8, 2025); *B.D.V.S., Petitioner, v. Kerry J. Forestal, et al.*, No. 1:25-CV-01968-SEB-TAB, 2025 WL 2855743, at *3 (S.D. Ind. Oct. 8, 2025) (same); *Eliseo A.A., v. Samuel J. Olson, et al.*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025) (same); *Carlos Hubert Quispe-Ardiles, v. Kristi Noem, et al.*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *10 (E.D. Va. Sept. 30, 2025) (same); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *13 (E.D. Va. Sept. 19, 2025) (same); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025) (same); *Herrera v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792, at *13 (D. Nev. Sept. 5, 2025) (same); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *13 (D. Md. Aug. 24, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223, at *5 (D. Neb. Aug. 14, 2025) (same); *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1190 (D. Minn. 2025) (same).

Based on that overwhelming case law finding that DHS' automatic stay provision at § 1003.19(i)(2) violates due process, this Court should find that Mr. Saravia is likely to succeed on the merits of his due process claims.

II. Absent An Injunction, Mr. Saravia Is Likely To Suffer Irreparable Harm

Mr. Saravia asserts he is and will be irreparably harmed every day that he remains detained in contravention of due process. He has been separated from his 13-year-old U.S. citizen child and from his other family members for over four months since the DHS

re-arrested and re-detained him on May 30, 2025, and nearly three months since the Honorable Kevin Terrill granted him a \$3000 bond in the Pearsall, Texas Immigration Court. Mr. Saravia cannot work and earn money to support his child. And, most importantly, being detained is an unpleasant, stressful, and potentially traumatizing experience due to a combination of physical, psychological, and social factors. Even a brief period of detention can have devastating, long-lasting consequences. Interactions with authority figures can be dehumanizing and can result in a profound loss of dignity and respect, creating a highly traumatic experience. Thus, this Court should find that Mr. Saravia is likely to suffer irreparable harm if the injunction is not granted.

III. The Remaining Factors Weigh In Favor Of Granting An Injunction

The balance of equities tips in Mr. Saravia's favor because the harm suffered by Mr. Saravia each and every day of his detention based on a deprivation of his constitutional rights while his habeas corpus petition is pending far outweighs any injury to Respondents from releasing Mr. Saravia from DHS detention. Further, entry of a preliminary injunction would not disserve the public interest because it would protect Mr. Saravia from being subjected to an unconstitutional immigration regulation.

CONCLUSION

WHEREFORE, for the reasons set above, this Honorable Court should grant Petitioner's preliminary injunction and order Respondents to immediately release Petitioner from custody on his own recognizance or under parole, bond, or reasonable conditions of supervision.

Respectfully submitted,

JOSUE DAVID SARA VIA SARA VIA,
Petitioner

By: /s/ Timothy W. Davis

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2025, I electronically filed the foregoing Petitioner's Motion for a Preliminary Injunction and proposed order with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all counsel of record.

/s/ Timothy W. Davis

Timothy W. Davis

Attorney for Petitioner