

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-3463

YUNIER SABORIT AGUILAR,

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland Security,

PAMELA BONDI, in her official capacity as
Attorney General of the United States,

TODD LYONS, in his official capacity as
Acting Director and Senior Official Performing the Duties of the Director of U.S.
Immigration and Customs Enforcement,

ROBERT GUADIAN, in his official capacity as
Field Office Director of the Denver Field Office of U.S. Immigration and Customs
Enforcement, Enforcement and Removal Operations,

JUAN BALTAZAR, in his official capacity as
Warden of the Aurora Contract Detention Center

Respondents.

MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner, Yunier Saborit Aguilar, moves this Court to issue a temporary
restraining order ("TRO") preventing immigration officials from transferring him outside the
District of Colorado or unlawfully removing him from the United States during the
pendency of this matter. Specifically, because Petitioner is likely to succeed on the merits

of his habeas petition and will suffer irreparable harm if he is transferred or removed, this Court should issue a TRO preventing such actions for the next fourteen (14) days.

I. Jurisdiction

This Court has inherent equitable power, as well as power under 28 U.S.C. § 1651 (the All-Writs Act), to temporarily enjoin the transfer and removal of a habeas petitioner where the Court's ability to fully, fairly, and efficiently decide the case, as well as the petitioner's health and safety, are at stake. See 28 U.S.C. § 2243 (habeas courts authorized to order relief "as law and justice require"); 28 U.S.C. § 1651(a) (empowering courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"); *Hazel-Atlas Glass Co. v. Hardford-Empire Co.*, 322 U.S. 238, 248 (1944) (stressing that "flexibility" of "equitable procedures" allows courts "to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct ... particular injustices"); *United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947) ("[T]he District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief."); *Degen v. United States*, 517 U.S. 820, 823 (1996) (recognizing that courts "have certain inherent authority to protect their proceedings and judgments"); *cf. Brownback v. King*, 592 U.S. 209, 218-19 (2021).

II. Request for Temporary Restraining Order

The purpose of a TRO is to preserve the status quo pending adjudication of a claim for injunctive relief. See *A.A.R.P. v. Trump*, 605 U.S. ----, 145 S.Ct. 1364, 1369 (2025). "A party seeking a temporary restraining order or preliminary injunction must show (1) a

substantial likelihood that the movant eventually will prevail on the merits; (2) that the movant will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest." *NRC Broad. Inc. v. Cool Radio, LLC*, 2009 WL 2965279, at *1 (D. Colo. Sept. 14, 2009); *Colorado v. DeJoy*, 487 F. Supp. 3d 1061, 1064 (D. Colo. 2020). The balance of the harms and public interest factors merge when the government is a party. See *Nken v. Holder*, 556 U.S. 418, 435, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009); Here, each of these factors weigh in favor of the Court granting a TRO preventing immigration officials from transferring Petitioner outside this district.

a. Likelihood of Success of the Merits

There is a substantial likelihood that Petitioner will succeed the claims raised his in petition. Petitioner has raised three challenges to his detention centering on: violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution; violation of the *Accardi* doctrine with respect to 8 C.F.R. § 241.13(i)(2) and 8 C.F.R. § 241.13(i)(3).

Here, Petitioner has a strong argument he will succeed on all claims. First, under the Fifth Amendment's substantive due process guarantees, detention must bear a reasonable relation to its purpose—ensuring removal. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because Petitioner has been granted withholding of removal, barring his deportation to Cuba, his detention serves no legitimate immigration purpose. Nor can it be narrowly tailored to any compelling governmental interest, given his previous release from custody without any incident.

Second, the government's detention decision is arbitrary and capricious under the APA, 5 U.S.C. § 706(2). Petitioner had been released under an OSUP awaiting his final hearing at the Denver Immigration Court. Detaining Petitioner despite not changed circumstances suggesting he presents any risk of flight or threat to public safety, and his continued detention after being granted withholding of removal, is lacks a rational basis and constitutes agency action contrary to law. For the avoidance of doubt, APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person, Petitioner, who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

Third, DHS has failed to follow its own regulations, violating the *Accardi* doctrine. 8 C.F.R. § 241.4(l)(1)–(2) and C.F.R. § 241.13(i) requires notice and an opportunity to respond before terminating his Order of Supervision (OSUP). By detaining Petitioner in a manner that bypasses all these procedures, DHS has disregarded binding regulations. Courts have consistently invalidated agency actions that fail to comply with self-imposed rules. *Garcia Cortes v. Noem*, No. 1:25-CV-02677-CNS, 2025 WL 2652880, at *4 (D. Colo. Sept. 16, 2025) ("The *Accardi* doctrine stands for the unremarkable proposition that an agency must abide by its own regulations") (citing *Ajaj v. United States*, No. 14-cv-01245-SMY, 2015 WL 14097638, at *2 (S.D. Ill. Dec. 29, 2015))

Fourth, Petitioner's continued detention also violates procedural due process. The government assured Petitioner his ongoing release from detention if they complied with

program requirements, creating a legitimate claim of entitlement. Yet Petitioner has been deprived of his liberty without any notice or opportunity to be heard, contrary to *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Taken together, these claims establish that Petitioner is being detained in clear violation of constitutional, statutory, and regulatory protections. Accordingly, the Court should find that he is likely to prevail in this habeas action and issue a TRO.

b. Threat of Immediate and Irreparable Harm

Petitioner is likely to suffer irreparable harm if a TRO is not granted. Absent a TRO, she could be transferred to a detention facility anywhere in the United States "as soon as tomorrow." *Tamay v. Scott*, No. 2:25-CV-00438-JAW, 2025 WL 2507011, at *3 (D. Me. Sept. 2, 2025) (granting TRO enjoining transfer of noncitizen habeas petitioner); accord *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2201470, at *2 (S.D. Tex. Aug. 1, 2025); *United States v. Gamez Lira*, 1:25-cv-00855-WJ-KK (D.N.M. Sept. 5, 2025), ECF No. 4.¹ And while Petitioner's grant of withholding of removal, recent events have shown that there is unfortunately a real risk of the inadvertent or intentional disregard of this protection.²

¹ Because the *Gamez Lira* order is not published, a copy of the order is attached to this motion as Exhibit 1.

² See, e.g., *Noem v. Abrego Garcia*, 604 U.S. __ (2025); Kyle Cheney, *A court halted his deportation. The Trump administration deported him 28 minutes later*, POLITICO (May 30, 2025), <https://www.politico.com/news/2025/05/30/trump-administration-deports-fourth-immigrant-court-order-violation-00378173?cid=apn>; Lindsay Whitehurst, et al., *'Unquestionably in violation': Judge says US government didn't follow court order on deportations*, AP NEWS (May 21, 2025), <https://apnews.com/article/deportation-immigration-south-sudan-department-of-homeland-security-a09612dbd055c5d1d88902c415bdf3e6>; *Trump's 48-hour scramble to fly migrants to a Salvadoran prison*, WASHINGTON POST (May 4,

If Petitioner is transferred to a facility outside the District of Colorado—and certainly if he is unlawfully removed from the United States—this would undoubtedly affect this Court's ability to adjudicate her claim. Removal would, of course, deprive the Court of jurisdiction entirely. But even transfer outside this judicial district would hinder the Court's ability to fully, fairly, and efficiently adjudicate this matter. By contrast, ensuring that Petitioner remains within the district "will facilitate [his] ability to work with [his] attorneys, coordinate the appearance of witnesses, and generally present [his] habeas claims, many of which are based on events that occurred in [Colorado]."*Ozturk v. Hyde*, No. 25-1019, 2025 WL 1318154, at *22 (2d Cir. May 7, 2025) (ordering return of habeas petitioner after ICE transfer to "facilitate the fair and expeditious resolution" of her case). Indeed, Colorado is where Petitioner has, for years, resided, worked, and established community ties, all in reliance on his OSUP; and where he was unlawfully arrested and detained by Respondents. To the extent any factual issues arise regarding Petitioner's claims, and to the extent any bail hearing becomes appropriate, the key witnesses and evidence will be located within this district. Temporarily prohibiting Petitioner's transfer will ensure that he can continue to work proactively with his attorneys to present his claims and allow him to appear in person for these proceedings, if necessary. Conversely, allowing his transfer (and certainly his removal) would prejudice his ability to fully present his case and impede these proceedings and the Court's jurisdiction.

2025), <https://www.washingtonpost.com/immigration/2025/05/04/trump-el-salvador-alien-enemies-act-venezuelans/> (all describing deportations of individuals with valid legal protections).

Moreover, Petitioner's family and support system is in Colorado. Transferring him could result in psychological trauma and destabilization of a settled life. Accordingly, this Court should find that Petitioner has established irreparable harm—just as courts across the country have done in granting TROs preventing transfer and removal pending adjudication of similar habeas petitions. See, e.g., *Gamez Lira*, 1:25-cv-00855-WJ-KK (D.N.M. Sept. 5, 2025); *Tamay*, 2025 WL 2507011, at *3; *Misirbekov*, 2025 WL 2201470, at *2; *Batooie v. Ceja*, No. 25-cv-2059, 2025 WL 1836695, at *2 (D. Colo. July 3, 2025); *Sepulveda Ayala v. Noem*, No. 25-cv-5185, 2025 WL 1207655, at *1-4 (W.D. Wash. Apr. 26, 2025).

c. *The Balance of Equities and Public Interest*

Many courts consider factors three and four together where, as here, the government is the respondent. See, e.g., *Misirbekov*, No. 2025 WL 2201470, at *2; see also *D.B.U. v. Trump*, 779 F.Supp.3d 1264, 1273 (D. Colo. 2025). Here, the public has a compelling interest in ensuring that individuals—including noncitizens—have meaningful access to courts to challenge the legality of government action. Preventing transfer and removal preserves the status quo while the Court evaluates whether the government is violating Petitioner's constitutional rights. It equally disincentivizes jurisdictional gamesmanship and protects the judiciary's ability to check executive power. The public interest is best served by maintaining judicial oversight and ensuring that relief is not rendered meaningless by unilateral executive action.

The balance of equities and the public interest both weigh heavily in favor of granting a TRO to prevent the Petitioner's out-of-district transfer or removal. Petitioner's

liberty, access to the courts, and constitutional claims would be jeopardized without emergency relief, while the government faces minimal, if any, harm from maintaining the status quo pending judicial review. Accordingly, these facts weigh in favor of the Court issuing the TRO.

III. The Court Should Waive the Security Requirement

Federal Rule of Civil Procedure 65 permits the court to issue a TRO "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, district courts have wide discretion under Rule 65(c) and may elect to not impose a bond. *Sepulveda Ayala v. Noem*, No. 25-cv-5185, 2025 WL 1207655, at *4 (W.D. Wash. Apr. 26, 2025), *Ordonez-Lopez v. U.S Department of Homeland Security*, No. 3:25-cv-00470, 4 (W.D. Tex. Oct 17, 2025). Accordingly, here, Petitioner requests the Court forgo the bond requirement under Rule 65(c) because any damages Respondents might suffer if the TRO is granted is merely speculative. Moreover, this is not a commercial dispute where money damages are at issue. The balance of equities and the public interest in ensuring meaningful judicial review of immigration detention strongly support waiving the bond requirement. See, e.g., *Sepulveda Ayala*, 2025 WL 1207655, at *4 (W.D. Wash. Apr. 26, 2025) (waiving bond under similar circumstances).

IV. Conclusion

As outlined above, Petitioner has demonstrated all the conditions necessary for this Court to grant a TRO. Accordingly, he respectfully requests the Court to order that Respondents be enjoined from transferring Petitioner outside this judicial district or

removing him from the United States. Federal Rule of Civil Procedure 65(b)(2) provides that a TRO “expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension.” Accordingly, Petitioner requests that the Court issue the TRO for at least 14 days, or for good cause extend beyond that time period if the Court is unable to hold a hearing on this matter before then.

Dated: October 30, 2025.

Respectfully submitted,

s/ Aaron Slade
NOVO LEGAL GROUP, LLC
4280 Morrison Road
Denver, Colorado 80219
(303) 335-0250
ASlade@novo-legal.com