


UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO.: 3:25-cv-01522-WWB-LLL

LOURIVAL DOS SANTOS LOPES,)
(A-Number ))
)
Petitioner,)
)
vs.)
)
SCOTTY RHODEN, as Sheriff of Baker)
County and custodian of the Baker County)
Detention Center; KRISTI NOEM, as)
United States Secretary of Homeland)
Security; GARRETT J. RIPA, as Field)
Office Director, U.S. Immigration and)
Customs Enforcement; and PAM BONDI,)
as United States Attorney General.)
)
Respondents.)
_____)

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
PROHIBITING TRANSFER OR REMOVAL

Petitioner, Lourival Dos Santos Lopes (“Lopes”), by and through undersigned counsel, respectfully moves this Court for entry of a Temporary Restraining Order pursuant to Federal Rule of Civil Procedure 65, prohibiting Respondents from transferring Petitioner outside the Middle District of Florida or removing him from the United States pending further order of the Court. In support of the emergency motion, Petitioner states as follows:

I. INTRODUCTION

Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his detention by U.S. Immigration and Customs Enforcement (“ICE”). Petitioner is presently detained at the Baker County Detention Center in Macclenny, Florida, within the jurisdiction of this Court.

Upon information and belief, there is a substantial and imminent risk that ICE will transfer Petitioner outside this District—most likely to Central Louisiana ICE Processing in Jena, Louisiana, or Adams County Correctional Center in Natchez, Mississippi—after receiving notice of the pending habeas action. Such a transfer would materially impair this Court’s jurisdiction, frustrate meaningful judicial review, interfere with Petitioner’s access to counsel, and substantially prejudice his ability to obtain bond relief.

Accordingly, narrowly tailored temporary relief is necessary to preserve the status quo pending adjudication of the Court’s habeas jurisdiction.

II. LEGAL STANDARD

A temporary restraining order may issue where the movant demonstrates: (1) a substantial likelihood of success on the merits; (2) irreparable injury absent injunctive relief; (3) that the threatened injury outweighs any harm to the opposing party; and (4) that the entry of relief would serve the public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008); Schindler v. Schiavo, 403 F.3d 1223 (11th Cir. 2005).

This Court is also vested with authority under 28 U.S.C. §§ 2241 and 2243, and the All Writs Act, 28 U.S.C. § 1651(a)¹, to preserve its jurisdiction and ensure meaningful review by ordering the non-transfer of a detained habeas petitioner.

III. ARGUMENT

A. Petitioner Has a Substantial Likelihood of Success on the Merits

Pursuant to a July 8, 2025 internal memorandum from DHS to all ICE employees declaring that, effective immediately, individuals present in the United States without admission or parole are to be treated as “applicants for admission,” noncitizens such as Petitioner have been subject to mandatory detention under 8 U.S.C. § 1225(b)(2), rather than discretionary detention under § 1226(a). See ICE Memo: *Interim Guidance Regarding Detention Authority for Applicants for Admission*, AILA Doc. No. 25071607 (July 8, 2025), <https://perma.cc/5GKM-JYGX>. This directive imposed a drastic change in policy through which the DHS has unilaterally rewritten the statutory law and ignored decades of judicial precedent.

But in Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (DE-82, Nov. 25, 2025), 2025 WL 3288403, at *9, the Central District of California certified a nationwide class of noncitizens detained under INA § 236(a) and declared that class members are indeed entitled to individualized bond hearings. Undisputedly, Petitioner is a member of the certified class. Accordingly, Petitioner’s habeas petition presents statutory claims that, pursuant to a binding declaratory judgment, have

¹ See e.g., Juarez v. Bondi, No. 25-17849 (GC), (DE-2, at 2-3) (D.N.J. Nov. 24, 2025).

already been determined to be meritorious. Petitioner's claim to entitlement to discretionary custody review under 8 U.S.C. § 1226(a) is also consistent with prevailing authority which has been recently emerging on this very issue in the district courts of Florida. *See, e.g., Vasquez Carcamo v. Noem*, No. 2:25-cv-00922-SPC-NPM, 2025 WL 3119263 (M.D.Fla. Nov. 7, 2025) (collecting cases); Hinojosa Garcia v. Noem, No. 2:25-cv-00879-SPC-NPM, 2025 WL 3041895 (M.D.Fla. Oct. 31, 2025); Puga v. Ass't Field Office Director, Krome North Service Processing Center, No. 25-24535-CIV-Altonaga, 2025 WL 2938369 (S.D.Fla. Oct. 15, 2025); Duvalon Boffill v. Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement, 2025 WL 3246868 (S.D.Fla. Nov. 20, 2025); Merino v. Ripa, No. 1:25-cv-24535-CIV-Altonaga (S.D.Fla. Oct. 15, 2025); Lopez v. Hardin, No. 25-cv-830, 2025 WL 2732717 (M.D.Fla. Sept. 25, 2025) ("every court to address the question presented here has found that an alien who is not presently seeking admission and has been in the United States for an extended time is appropriately classified under § 1226(a) and not § 1225(b)(2)."). At minimum, Petitioner's claims are serious, non-frivolous, and warrant full judicial consideration, satisfying the likelihood-of-success requirement for interim relief.

B. Petitioner Will Suffer Irreparable Harm Absent a TRO

The erroneous deprivation of a noncitizen's liberty, "for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976).

Here, absent a temporary restraining order, ICE may transfer Petitioner outside this District at any time. Such a transfer would cause irreparable harm by: (1) threatening this Court's habeas jurisdiction and risking mootness or jurisdictional manipulation; (2) severely impairing Petitioner's access to counsel, who is located in Florida; and (3) materially diminishing Petitioner's ability to obtain bond relief, particularly if transferred to a jurisdiction where access to a § 1226(a) bond hearing is significantly more limited.

Once transferred, these harms cannot be undone.

C. The Balance of Equities and the Public Interest

Petitioner seeks only preservation of the status quo. ICE suffers no cognizable harm from maintaining Petitioner's current location pending judicial review. By contrast, Petitioner faces severe and irreversible prejudice absent relief. The equities therefore weigh decisively in Petitioner's favor.

The public interest is served by ensuring compliance with federal habeas jurisdiction, preventing strategic transfers that frustrate judicial review, and preserving the integrity of the courts' ability to adjudicate challenges to executive detention. As noted in *Maldonado Bautista*, the implementation of the July 8, 2025 ICE memorandum has triggered repetitive and continuing violations of federal law, with nationwide consequences. Permitting continued violations of federal law would serve "neither equity nor the public interest." Galvez v. Jaddou, 52 F.4th 821, 832 (9th Cir. 2022).

WHEREFORE, Petitioner respectfully requests that this Court enter a Temporary Restraining Order providing that:

A. Respondents and all persons acting in concert with them SHALL NOT TRANSFER Petitioner Lourival Dos Santos Lopes outside the territorial jurisdiction of the United States District Court for the Middle District of Florida;

B. Respondents and all persons acting in concert with them SHALL NOT REMOVE Petitioner from the United States, pending further order of this Court.

Petitioner further requests such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/Howard Jerome Levine

Howard J. Levine

Fla. Bar No. 0075670

Levine & Fellig, P.A.

927 Lincoln Road, Suite 200

Miami Beach, FL 33139

Tel: (786) 899-0002

Cell: (305) 322-5697

hlevine@levinefelliglaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been served through the Court's CM/ECF System on December 19, 2025, which will contemporaneously electronically serve all counsel of record. On December 15, 2025, undersigned counsel was informed by the Clerk that no summonses would be issued in the case and that it was anticipated that the Clerk would be directed to serve the Respondents. On December 16, 2025, the Court directed the Clerk to serve the Respondents and ordered Respondents to respond to the Petition for Habeas Corpus (DE-1) within thirty (30)

days. To date, the United States Attorney's Office has not appeared on behalf of the Respondents. Accordingly, I certify that on December 19, 2025, a true and correct copy of the foregoing was also served by email on the United States Attorney for the Middle District of Florida, at the email USAFLM.JAX.Civl.NewCases@usdoj.gov.

/s/ Howard J. Levine _____
Howard J. Levine