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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDUARDO SANDOVAL-VELA,

Petitioner,

vs.

JANET NAPOLITANO, et al.,

Respondents.

CASE NO. 10-CV-0059 - IEG (RBB)

ORDER:

(1) GRANTING EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER;

(2) TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT BE ISSUED, and

(3) DENYING AS MOOT MOTION TO CONSOLIDATE CASES OR ALTERNATIVELY FOR ASSIGNMENT UNDER THE LOW NUMBER RULE.

On January 8, 2010, Petitioner submitted a Petition for Writ of Habeas Corpus pursuant to 22 U.S.C. § 2241, seeking relief from an immigration detainer on the basis that he is a United States citizen who derived citizenship from his father. Together with his petition, Petitioner submitted an Ex Parte Application for Temporary Restraining Order and Preliminary Injunction, asking that the Court enjoin Respondents from executing the immigration detainer and prohibit them from entering a reinstatement of a previous deportation order.

BACKGROUND

Petitioner is currently facing federal criminal charges for violating 8 U.S.C. § 1326 in United

1 States v. Sandoval-Vela, Case No. 09CR763-BTM. In that case, he has argued that he is not guilty of
2 illegal reentry because he is an United States citizen through derivation from his father. Petitioner's
3 motion to dismiss the indictment on that basis is pending. On January 7, 2010, the Government filed
4 a motion to dismiss the charges. A hearing is on calendar today, and the court is expected to dismiss
5 the criminal case, which would require Petitioner to be released from pretrial detention.

6 Respondents have issued an immigration detainer against Petitioner. (Petitioner's Ex Parte
7 Application, App'x A.) The detainer requires the warden to hold Petitioner over for DHS purposes
8 for 48 hours. (Id.) Petitioner alleges that but for the DHS detainer, Petitioner would have to be
9 released upon the imminently impending dismissal of his criminal case.

10 Petitioner alleges that enforcement of the detainer is unlawful because Petitioner is a United
11 States citizen, not an alien subject to immigration detention. See Flores-Torres v. Mukasey, 548 F.3d
12 708, 713 (9th Cir. 2008). Petitioner argues that, should the warden comply with the detainer, which
13 he is expected to do, Petitioner will suffer the irreparable harm of illegal detention.

14 The basis for Petitioner's citizenship claim is that he derived citizenship from his father,
15 Eduardo Sandoval-Salgado, through operation of the immigration laws.

16 **DISCUSSION**

17 Having reviewed Petitioner's claims, the Court finds that summary dismissal of the petition
18 is unwarranted at this time. Moreover, Respondents are hereby **ORDERED TO SHOW CAUSE** on
19 **Friday, January 22, 2010 at 2:00 p.m.** or as soon thereafter as counsel may be heard in the
20 courtroom of the Honorable Irma E. Gonzalez, located at 940 Front Street, San Diego, CA 92101, why
21 a Preliminary Injunction in this case should not be granted.

22 PENDING HEARING on the above Order to Show Cause, Respondents and their agents,
23 assigns, employees, officers, attorneys, and representatives and those in active concert or participation
24 with them **ARE HEREBY RESTRAINED AND ENJOINED** from enforcing or otherwise executing
25 the immigration detainer on Petitioner Eduardo Sandoval-Vela; enjoined from imposing immigration
26 detention on Petitioner; and enjoined from issuing a reinstatement or otherwise effectuating removal
27 of the Petitioner from the United States.

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CONCLUSION

For the foregoing reasons, the Court ORDERS as follows:

(1) Petitioner’s Ex Parte Application for a Temporary Restraining Order is **GRANTED**.

The Temporary Restraining Order is EFFECTIVE IMMEDIATELY.


(2) The Court sets **Friday, January 22, 2010 at 2:00 p.m.** as the hearing on Petitioner’s request for a Preliminary Injunction. The Court also ORDERS Petitioner to serve this Order to Show Cause and supporting papers on Respondents no later than **Friday, January 8, 2010 at 5:00 p.m.**

(3) Any response or opposition to this Order to Show Cause must be filed and personally served on Petitioner’s counsel no later than **Friday, January 15, 2010**. Petitioner may file a reply and serve it upon Respondents no later than **Wednesday, January 20, 2010 at 12:00 p.m.**

(4) Petitioner’s Motion to Consolidate Cases or Alternatively for Assignment under the Low Number Rule is **DENIED AS MOOT**.

IT IS SO ORDERED.

DATED: January 8, 2010


IRMA E. GONZALEZ, Chief Judge
United States District Court