

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 06-cv-01259-MSK-CBS

BENITO LOYA,
GLORIA LOYA,

Petitioners,

v.

MARIO ORTIZ, District Director, Bureau of Citizenship and Immigration Services (USCIS),
DOUGLAS MAURER, Interim Field Director, or current Director of Immigration and Customs
Enforcement (ICE), a subdivision of Department of Homeland Security, Denver, Colorado,

Respondents.

**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER,
DIRECTING THE FILING OF A VERIFIED APPLICATION, AND
DIRECTING THE FILING OF A RESPONSE TO THE
MOTION FOR PRELIMINARY INJUNCTION**

THIS MATTER comes before the Court on the Petitioners' Motion for Preliminary Injunction and Temporary Restraining Order (#2), which incorporates by reference their Application for Writ of Habeas Corpus (#1). Having considered the same, the Court

FINDS and **CONCLUDES** that:

Pursuant to 28 U.S.C. § 2242, an "[a]pplication for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf." The Application (#1) is not verified. Therefore, the Court cannot reach its merits at this juncture.

There is nothing in the Court's file evincing that the Respondents have notice of the Petitioners' motion for a temporary restraining order. Therefore, the Court treats the motion as

one without notice. Pursuant to Fed. R. Civ. P. 65(b), a motion for a temporary restraining order cannot be granted without notice unless it is supported by an affidavit or a verified complaint.

The Petitioners have provided no affidavit.

IT IS THEREFORE ORDERED that:

- (1) The Motion for a Temporary Restraining Order (**#2-2**) is **DENIED**. The Motion for Preliminary Injunction (**#2-1**) remains pending.
- (2) On or before **July 7, 2006**, the Petitioners shall file a verified Application for Writ of Habeas Corpus, or their initial Application (**#1**) may be denied without further notice. By such date the Petitioners shall also serve such Application, the Motion for Preliminary Injunction and this Order on the Respondents.
- (3) On or before **July 11, 2006**, the Respondents shall file a response to the Motion for Preliminary Injunction (**#2-1**).
- (4) A non-evidentiary hearing is set for **July 12, 2006** at **8:30 a.m.** in Courtroom A901 of the United States Courthouse located at 901 19th Street, Denver, Colorado. The parties shall be prepared to address whether an evidentiary hearing is required on the motion for a preliminary injunction.

Dated this 30th day of June, 2006

BY THE COURT:

A handwritten signature in black ink, reading "Marcia S. Krieger". The signature is written in a cursive style with a horizontal line underneath it.

Marcia S. Krieger
United States District Judge