UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 25-60673-CV-WILLIAMS

MARIA DOLORES NAVARRO MARTIN
Petitioner

v

UNITED STATES ATTORNEY GENERAL
Respondent

_____/

MOTION REQUESTING A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND ADMINISTRATIVE STAY.

COMES NOW, Plaintiff, Maria Dolores Navarro Martin, pro se, requests a preliminary injunction under F.R.C.P. 65(a) enjoining Defendant in her official capacities from enforcing the provision of the Administrative Procedure Act, 5 U.S.C. 701-706 ("APA"), the Medicaid Act. See 42 U.S.C.S. 1396u-2(f), the Civil Asset Forfeiture Reform Act ("CAFRA"), 18 U.S.C. 983(d) *et seq.* and the non-delegation and major questions doctrines; which authorizes federal courts to issue preliminary injunctions; to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. 706(1); and who refused to an unequivocal mandate to return the petitioner's properties to the court, with which the defendant had failed to comply.

The Defendant as Former Florida Attorney General; trough of the Agency "Department of Homeland Security" (DHS) and in conjunction with members of the Medicaid Fraud Control Unit ("MFCU"), refused to an unequivocal mandate to return the petitioner's properties to the court as ordered upon a Search Warrant issued and which included her passport; depriving and being it necessary as an exculpatory evidence to show that the petitioner is not a flight risk; and to be presented in any further bond reconsideration hearing before the Immigration Court. This circumstances where the defendant has failed to comply with a court order and a statutory mandate; justified declaratory relief to "compel agency action unlawfully withheld or unreasonably delayed, since that a upon a Search Warrant issued; to mandate the return the petitioner's properties to the court as ordered; and in support allege as follow:

I. Jurisdiction

This court have jurisdiction to entertain this petition under the All Writs Act, 28 U.S.C. 1651(a), and under the Administrative Procedure Act, 5 U.S.C. 706(1). Since that the Section 706 of the APA commands courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. 706(1), and "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary [or] capricious." 5 U.S.C. 706(1)-(2)(A); and that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. 706(2)(C).

Appellants assert an "unlawful withholding" claim. "A claim under 706(1) can proceed where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *Norton v. S. Utah Wilderness All. (SUWA)*, 542 U.S. 55, 64, 124 S. Ct. 2373, 159 L. Ed. 2d 137 (2004) (emphasis in original). In other words, "a court's authority to compel agency action is limited to instances where an agency ignored 'a specific, unequivocal command' in a federal statute or binding regulation."

Whether the defendant applied the correct legal standard is a question of law under the sections Fla. Stat. § 933.14 and section 18 U.S.C.S. 983(d); where the petitioner was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value) (See Exhibits attached herein); and did not know and was reasonably without cause to believe that the property was subject to forfeiture; since that (1) was not returned to the court; (2) the petitioner did not received notice and (3) the criminal charges were found "Nolle prosequi". Which the defendant violated her constitutional rights by depriving her of a meaningful post-deprivation remedy to retrieve her seized property and interfered with her ability to use this process. "Practices, acts, policy, custom and invidious discrimination is irrational, it shocks the conscience, it is substantially unfair, and it is a deliberate deprivation of Plaintiff's property rights.... the state's postdeprivation tort remedies provided the man with all the process that was due (her)" *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990).

"The phrase ``questions of law" in the Provision includes the application of a legal standard to undisputed or established facts... The zipper clause is meant to ``consolidate judicial review of immigration proceedings into one action in the court of appeals." *INS* v. *St. Cyr*, 533 U. S. 289, 313, 121 S. Ct. 2271, 150 L. Ed. 2d 347. The zipper clause's language makes clear that Congress understood the statutory term ``questions of law and fact," to include the application of law to facts" *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 140 S. Ct. 1062, 1067, 206 L. Ed. 2d 271 (2020).

II. Statements of Issues

Where this court has authority to compel agency action in this instances where the defendant ignored 'a specific, unequivocal command' in a federal statute or binding regulation." And It is an obligation under 1782(c) provided a mandatory and nondiscretionary duty for which this federal court could properly compel compliance.

Whether circumstances justified a preliminary and declaratory relief because the Defendant, whose decision is at issue here, refused to an unequivocal mandate to return the petitioner's properties to the court, with which the defendant has failed to comply.

III. Statement of Facts:

A. Executed by the Defendant trough the Agency "Department of Homeland Security" (DHS).

The Defendant as Former Florida Attorney General; trough of the Agency "Department of Homeland Security" (DHS) and in conjunction with members of the Medicaid Fraud Control Unit ("MFCU"), refused to an unequivocal mandate to return the petitioner's properties to the court as ordered upon a Search Warrant issued and which included her passport; depriving and being it necessary as an exculpatory evidence to show that the petitioner is not a flight risk; and to be presented in a further bond reconsideration hearing before the Immigration Court and to with which the defendant has failed to comply.

On February 7, 2017 the Defendant through her "MFCU" and the Agency "Department of Homeland Security" ("DHS"), executed a Search warrant for the DHS Agents upon the use of perjured testimony gave in the affidavit and where the search and seizures: (1) Had been previously executed (2) were executed in different locations and to different persons not described in the warrant (3) The petitioner had use immunity statutory granted and (4) the DHS failed to return the properties to the court as described in the search warrant. There was an egregious violation of the respondents' constitutional Fourth and Fourteenth Amendments rights, the officer's conduct affected the result of a subsequent proceeding in which she is a party in this civil action. The defendant falsely imprisoned petitioner upon Two Charges of Medicaid Fraud which were found by the prosecution "Nolle Prosequi" on February 14, 2024, upon the case No. 2017-CF-001585-B-O.

Here, Respondent failed to take a *discrete* agency action over the return of petitioner's properties to the court as described in the search warrant; where was statutorily required under the Fla. Stat.§ 933.14. The original property owner's motion to return the res is a recognized procedure in Florida case law. *Cf. Sawyer v. Gable,* 400 So. 2d 992, 994 (Fla.3d DCA1981) (section 933.14, providing for return of property seized under a search warrant, does not provide statutory

mechanism for motion seeking return of property, but implicit in the court's authority to order the property returned is "the right of the person from whom it was seized to move for its return").

The property isn't in court's custody subject to forfeiture proceeding; since that were seized, Seven Ford Van Transit, One SUV White GMC, and another vehicles in locations not described in the warrant and which isn't in court's custody, as ordered. The petitioner and her family's passport and documents related; where seized to persons not described in the warrant. There was an egregious violation of the respondents' constitutional Fourth and Fourteenth Amendments rights, where the defendant's conduct affected the result of a subsequent proceeding in which she is a party in this civil action.

The Search Warrant issued on February 2, 2017; ordered to 'The Agency":

> **"An Inventory of Any evidence or property seized under this Search Warrant shall be filed with the court within ten (10) days of the date of issuance. It is further directed that any evidence or property seized under this warrant shall be brought before a Court having proper jurisdiction to be disposed of according to law"**

Here, the statute or regulation requires additional action by defendants after placement into "administrative processing". The defendant through her agency (DHS) ignored 'a specific, unequivocal command' in a federal statute and binding regulation, and failed to take a *discrete* agency action over the return of petitioner's properties to the court that it is required to take. This court has authority to compel agency action in this instances where an agency ignored 'a specific, unequivocal command' in a federal statute or binding regulation." And It is an obligation under 1782(c) provided a mandatory and nondiscretionary duty for which this federal court could properly compel compliance.

B. Executed by the Defendant trough the Florida Agency for Healthcare Administration (AHCA).

The plaintiff first make a showing of "actual success" on the merits:

Plaintiff, Maria Dolores Navarro Martin, was the owner and legal representative of the corporation Angels Creative Children's Therapy LLC.("Angels"), a former Florida Medicaid provider of services to developmentally-disabled minors with provider type 67 under the number 0108083-00 and provider type 39 under the number 0174192-00. The plaintiff has a viable right under 42 U.S.C.S. 1396u-2(f), to that the Florida Agency for Health Care Administration ("AHCA"); executed the payments requested of her provider's Medicaid Number 0108083-00; since that in the eight years that provider's Medicaid payments have been suspended, that suspension crossed the line from "temporary" to "indefinite" in violation of the due process of the law, and in support allege as follow:

Angels Creative Children's Therapy LLC., was "a Florida Medicaid provider of services to developmentally-disabled minors." with provider type 67 under the number 0108083-00 and provider type 39 under the number 0174192-00. Maria Dolores Navarro Martin is its owner.

Angels Creative Children's Therapy LLC., alleges that beginning in 2017, the Florida Agency for Health Care Administration wrongfully suspended payments rendered under the Agency's "Behavior Analysis Services Program." In its final audit report, the Agency denied payments for more than $1.447.233,55 million from Angels Creative Children's Therapy LLC. The letter did not outline any procedure for appealing this denial.

The Agency concluded that it had denied the payments to Angels Creative Children's Therapy LLC. by more than $1.447.233,55 million for services not rendered under Medicaid. The Agency determined that the Angels Creative Children's Therapy LLC. employees who rendered the services at issue were not qualified or had not properly documented their qualifications. It also assessed. The Agency explained that it intended to withhold payments for Medicaid services if necessary to cover the recoupment and fine. The Agency paid Angels Creative Children's Therapy LLC, about $4.968,00 of the funds it had withheld.

Angels Creative Children's Therapy LLC., filed a petition for a formal hearing to challenge the suspension and denial of payments. Angels Creative Children's Therapy LLC. and alleged that the Agency had wrongfully issued "denial of payment demands based on newly-created retroactively-applied provider qualification requirements", under an "Agency Alert" which was not a promulgate rule. During the administrative proceedings, Angels Creative Children's Therapy LLC., served the Agency and exercised its right under state law to request an administrative hearing, which was denied by the Agency.

According to Angels Creative Children's Therapy LLC., the Agency officials-particularly Tim Helms, Chief of the Office of Medicaid Program Integrity-retaliated against Angels Creative Children's Therapy LLC., for its administrative challenge and for its criticism of the Agency according to court records. The day after the Agency withheld funds to Angels Creative Children's Therapy LLC. asserts, Tim Helms "embarked on a course of conduct to retaliate against Angels Creative Children's Therapy LLC. to put Angels Creative Children's Therapy LLC. out of business. The Agency notified Angels Creative Children's Therapy LLC. that it was being investigated for fraud and that "general allegations against Angels Creative Children's Therapy LLC. included "billing for services not rendered."

Plaintiff received periodic updates from the Medicaid Fraud Control Unit and of the defendant; the Florida Attorney General's Office at time, which is responsible for determining whether prosecution is warranted. *See* Fla. Stat. 409.920(9)(d).

During the pendency of the allegedly retaliatory investigations, "the Agency again suspended Medicaid payments to Angels Creative Children's Therapy LLC." Federal regulations provide that "the State Medicaid agency must suspend all Medicaid payments to a provider after the agency determines there is a credible allegation of fraud for which an investigation is pending." 42 C.F.R. 455.23(a)(1). Angels Creative Children's Therapy LLC. continued "providing services to Medicaid patients without receiving payment from the Agency." From November 15, 2016 to February 6, 2017, it allegedly "accumulate[d] over $1.447.233,55 in accounts receivable from the Agency." Eventually, the payment suspension took a financial toll on Angels Creative Children's Therapy LLC. On February 7, 2017 Angels Creative Children's Therapy LLC had to

suspend its services, due to the owner arrest. Angels Creative Children's Therapy LLC., alleges that it "completely ceased operations" but "remained a Florida Medicaid provider subject to" the Agency's authority, and It alleged that its payments should not have been suspended because there was no credible allegation of fraud,

In February 14, 2024 the assigned prosecutor filed a "Nolle Prosequi" in the criminal case open against the owner Maria Dolores Navarro Martin, and told Angels Creative Children's Therapy LLC. that everyone in the Chain of Command had Approved the Closing of the investigation for Lack of Evidence. They awaited the approval of only the Chief Assistant Attorney General. Here, "grant of nolle prosequi was sufficient to satisfy the requisite element of favorable termination of the criminal action... constituted a termination favorable to appellant. Thus, appellant's claims did not accrue until the charges were dismissed, and the action was not time-barred" Uboh v. Reno, 141 F.3d 1000 (11th Cir. 1998). The plaintiff showed "actual success" on the merits.

Here, the statute or regulation requires additional action by defendants after placement into "administrative processing". The defendant through her agency (AHCA) ignored 'a specific, unequivocal command' in a federal statute and binding regulation, and failed to take a *discrete* agency action over the return of petitioner's properties to the court that it is required to take. This court has authority to compel agency action in this instances where an agency ignored 'a specific, unequivocal command' in a federal statute or binding regulation." And It is an obligation under 1782(c) provided a mandatory and nondiscretionary duty for which this federal court could properly compel compliance.

STANDING:

It is established that "[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006), as follows:

Plaintiff may establish that the irreducible constitutional minimum of standing consists of three elements, as follows:

(1) Plaintiff suffered an injury in fact:

Plaintiff suffered an ``concrete, *de facto*" injuries for essentially two reasons. First Defendant violated *her* statutory rights, not just the statutory rights of other people, where the Defendant together with the Office of Medicaid Program Integrity and Agents Medicaid Fraud Control Unit (MFCU); violated her right to Due Process under the Fourteenth Amendment to the Constitution by:

- Upon Spoliation, and destruction of exculpatory evidence, and lied under oath gave notice of business records electronically stored on the application Clinic Source"

executing a subpoena of plaintiff's personal medical records; without a Search warrant as required by Fla. Stat. § 394.4615(2)(c) and S.P. v. Vecchio, 162 So.3d 75(Fla.4th Dca 2014). Buttherworth v. X Hospital, 763 So.2d 467(Fl. 4th Dca 2014), where were seized also business records, and upon prosecution statements, was destroyed exculpatory evidence since that the prosecution "did not located a response from clinic source"; and lied under oath, since that the information had been previously part of the discovery as state the agent's affidavit; in violation of the plaintiff's rights as guaranteed by the fourth Amendment of the U.S. Constitution.

- Upon the Tortious interference with contractual relations which resulted in the suspension of her Medicaid payments for up to eight years without providing a hearing or detailing the particular "billing irregularities" supporting that suspension; and in violation of the plaintiff's rights as guaranteed by the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

- Upon violation of the plaintiff fifth Amendment right to self-incrimination, since that the plaintiff was served with a subpoena to testify before the defendant at time member of Office of The Florida State Attorney General upon the case No(s): MFC-14-00525 and MFC-16-00603, which had been granted immunity from prosecution upon the provisions of the Section 914.04 Fla. Statute. "The Statute is self-executing. Automatically grant use... immunity to one who testifies under the circumstances it delineates" Jenny v. State, 447 So.2d 1351" (Fla. 1984). "The compelled testimony nor any information directly or indirectly derived from such testimony could be used against the witness" Kastigar v. United States, 406 U.S. 441 448 92 SCT 1653 32 L.Ed. 2D 212(1972), rendering not only erroneous but a nullity and "Void ab Initio" all subsequent proceedings.

Plaintiff should show that she suffered ``an invasion of a legally protected interest" that is ``concrete and particularized" and ``actual or imminent" *Lujan*, *supra,* at 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351.194 L. Ed. 2d, at 643-646. (See Exhibits and Supporting Appendices Attached herein)..

(2) Plaintiff's personal interests in the handling of her medical records information are *individualized rather than collective.*

Here, the plaintiff injury is ``particularized" it affected the plaintiff in a personal and individual way. The Defendant disseminated information giving false statements though her web page stating: "we will not allow unscrupulous individual to defraud the Medicaid Program" (See Exhibit Attached). Since that on February 14, 2024; the assigned prosecutor filed a "Nolle Prosequi" in the criminal case open against the owner Maria Dolores Navarro Martin; "The plaintiff showed "actual success" on the merits" Uboh v. Reno, 141 F.3d 1000 (11th Cir. 1998). This "False statements... had sufficiently alleged an imminent injury for purposes of U.S. Const. art. III where their intended future dissemination of information... because threat of future enforcement was substantial" " *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246, 255 (2014).

(3) The "concrete" injury" *de facto* actually exist:

Here, the statute or regulation requires additional action by defendants after placement into "administrative processing". The Search Warrant issued on February 2, 2017; ordered to 'The Agency":

> **"An Inventory of Any evidence or property seized under this Search Warrant shall be filed with the court within ten (10) days of the date of issuance. It is further directed that any evidence or property seized under this warrant shall be brought before a Court having proper jurisdiction to be disposed of according to law"**

The defendant through her agency (DHS) ignored 'a specific, unequivocal command' in a federal statute and binding regulation, and failed to take a *discrete* agency action over the return of petitioner's properties to the court that it is required to take.

Here, The defendant through her agency (AHCA) also ignored that in the (eight) years that (provider)'s Medicaid payments have been suspended, that suspension crossed the line from "temporary" to "indefinite." Hence, (provider) has adequately alleged that she has a property interest in withheld payments for which she is owed due process of law" Alexandre v. Illinois Department Of Healthcare & Family Services, 2021 U.S. Dist. LEXIS 176737 No. 20 C 6745 (ED. Ill. 2021).

The plaintiff is likely to succeed on a claim that the termination violated 42 U.S.C.S. 1396a(a)(23) since the State provided no reason for the termination and actions involving a related entity were inapplicable to the provider, since that the prosecution filed a "Nolle Prosequi" upon the claims of false arrest and seizure in violation of the Fourth Amendment; illegal detention in violation of the Due Process Clause of the Fourteenth Amendment; civil conspiracy to violate her constitutional rights; and malicious prosecution, intentional infliction of emotional distress, and negligent hiring, retention, training, or supervision under Florida law, since that probable cause did not existed for her arrest, because the warrants had been previously executed, which plaintiff could establish that the deputy(s) acted in bad faith or with malicious purpose, See *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64, 124 S. Ct. 2373, 2379, 159 L. Ed. 2d 137 (2004) ("*SUWA*") (numbering added); as follows:

Right:

The federal Medicaid program was established by Congress to provide low-income families, disabled individuals, pregnant women, and children with affordable medical care. The program operates as a partnership between the federal government and the States. Subject to guidelines established by the federal government regarding eligibility for assistance, the types of services covered, and the costs of those services, States receive federal funds. 42 U.S.C.S. 1396a. Although States are afforded discretion in administering the program, they are required to submit their plans for federal approval. 42 C.F.R. 430.10. The plan operates as a contract between the participating State and the federal government, and the Department of Health and Human

Services may withhold federal funds if the State fails to comply substantially with the plan as approved and adopted. 42 C.F.R. 430.35. As a state participant, Florida maintains such a plan with the federal government. The State also maintains provider agreements with health-care providers, which impose on providers state and federal regulatory requirements governing the filing of claims. When a provider renders covered services to a Medicaid recipient, the State pays that provider directly.

Medicaid is a cooperative federal-state program that "offers federal funding to States to assist pregnant women, children, needy families, the blind, the elderly, and the disabled in obtaining medical care." Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2581, 183 L. Ed. 2d 450 (2012). As a condition of receiving federal funds, states that elect to participate in the Medicaid program must comply with all federal requirements and standards set forth in the Medicaid Act. **See** 42 U.S.C. 1396a(a).

Rights of debtor/mental health center under Medicare and Medicaid provider agreements are property of estate. In re Psychotherapy & Counseling Ctr., 195 B.R. 522, 8 4th Cir. & D.C. Bankr. Ct. Rep. 669, 36 Collier Bankr. Cas. 2d (MB) 1, 50 Soc. Sec. Rep. Service 836, 1996 Bankr. LEXIS 513 (Bankr. D.D.C. 1996)."For these reasons, the court rules that a trier of fact could find that, in the (eight) years that (provider)'s Medicaid payments have been suspended, that suspension crossed the line from "temporary" to "indefinite." Hence, (provider) has adequately alleged that she has a property interest in withheld payments for which she is owed due process of law" ALEXANDRE, v. ILLINOIS DEPARTMENT OF HEALTHCARE & FAMILY SERVICES, 2021 U.S. Dist. LEXIS 176737 No. 20 C 6745 (ED. Ill. 2021). Moreover, "appellant had alleged a viable right under 42 U.S.C.S. 1396u-2(f) to have HFS act to try to ensure timely payments...The court further held that 42 U.S.C.S. 1396u-2(f) also unambiguously imposed a binding obligation on the state...with the contractual enforcement scheme in the Medicaid Act" St. Anthony Hosp. v. Eagleson, 100 F.4th 767, 118 Fed. R. Serv. 3d (Callaghan) 1490, 2024 U.S. App. LEXIS 10043 (7th Cir. 2024). *Manuel v. City of Joliet*, 137 S. Ct. 911, 197 L. Ed. 2d 312 (2017).

The Injury is fairly traceable to the challenged conduct of the defendant:

The federal statute, 42 U.S.C.S. 1396a(a)(37), requires that a state provide for procedures of prepayment and postpayment claims review, including review to ensure the proper and efficient payment of claims and management of the program.

> "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.' Wisconsin v Constantineau, 400 US 433, 437, [27 L Ed 2d 515, 91 S Ct 507]. Wieman v Updegraff, 344 US 183, 191, [97 L Ed 216, 73 S Ct 215]; Joint Anti-Fascist Refugee Committee v McGrath, 341 US 123, [95 L Ed 817, 71 S Ct 624]; United States v Lovett, 328 US 303, 316-317, [90 L Ed 1252, 66 S Ct 1073]; Peters v Hobby, 349 US 331, 352,

> [99 L Ed 1129, 75 S Ct 790] (Douglas, J., concurring). See Cafeteria Workers v McElroy, 367 US 886, 898, [6 L Ed 2d 1230, 81 S Ct 1743]." Board of Regents v Roth, supra, at 573, 33 L Ed 2d 548, 92 S Ct 2701. See also, e.g., Greene v McElroy, 360 US 474, 496, 3 L Ed 2d 1377, 79 S Ct 1400 (1959); Cafeteria Workers v McElroy, 367 US 886, 899-902, 6 L Ed 2d 1230, 81 S Ct 1743 (1961) (Brennan, J., dissenting); Goss v Lopez, 419 US 565, 574-575, 42 L Ed 2d 725, 95 S Ct 729 (1975). In the criminal justice system, this interest is given concrete protection through the presumption of innocence and the prohibition of state-imposed punishment unless the State can demonstrate beyond a reasonable doubt, at a public trial with the attendant constitutional safeguards, that a particular individual has engaged in proscribed criminal conduct. "[B]ecause of the certainty that [one found guilty of criminal behavior] would be stigmatized by the conviction ... a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt." In re Winship, 397 US 358, 363-364, 25 L Ed 2d 368, 90 S Ct 1068, 51 Ohio Ops 2d 323 (1970).

42 C.F.R. 455.13 requires that the state Medicaid agency establish methods and criteria for identifying and investigating suspected Medicaid fraud and abuse, which do not infringe on the legal rights of persons involved and afford them due process of law. 42 C.F.R. 455.13(b). Similarly expansive language is found in 455.23, which provides that a state Medicaid agency may withhold Medicaid payments in whole or in part from a provider upon receipt of reliable evidence that the payment requests involve fraud or willful misrepresentation. 42 C.F.R. 455.23(a). Section 455.23 requires that a state agency send notice of its intent to withhold program payments to the provider within five days of taking such action. It permits withholding only "for a temporary period." 42 C.F.R. 455.23(b), (c).

After a "Nolle prosequi" entered in the criminal charges alleging Medicaid Fraud, the plaintiff may demonstrated that the agency has not good cause to suspend payments. The Agency violated of procedural due process because of the failure to provide notice of the intent to post and an opportunity to be heard, upon an administrative hearing before the definitive suspension of payments., where the defendant was the Florida Attorney General At Time who filed the false charges of Medicaid Fraud.

VINDICTIVENESS:

The Defendant as Former Florida Attorney General and member of the Medicaid Fraud Control Unit ("MFCU"), refused to an unequivocal mandate to return the petitioner's properties to the court as ordered upon a Search Warrant issued and which included her passport; depriving and being it necessary as an exculpatory evidence to show that the petitioner is not a flight risk; and to be presented in a further bond reconsideration hearing before the Immigration Court and to with which the defendant has failed to comply. This circumstances justified declaratory relief as to a presumption of vindictiveness because the Defendant, whose decision is at issue here, refused to an unequivocal mandate with which the defendant has failed to comply; in the light of

the Supreme Court's decision in Blackledge v. Perry, 417 U.S. 21, 94 S. Ct. 2098, 40 L. Ed. 2d 628 (1974).

1. The defendant has a "considerable stake" in maintaining the status quo and discouraging action that could upset such status quo. "A prosecutor clearly has a considerable stake in discouraging (a Nolle Prosequi defendant) from appealing and thus obtaining a trial *de novo* in the Superior Court, since such an appeal will clearly require increased expenditures of prosecutorial resources before the defendant's conviction becomes final, and may even result in a formerly convicted defendant's going free. And, if the prosecutor has the means readily at hand to discourage such appeals-by "upping the ante" through a felony indictment whenever a (Nolle Prosequi charge) pursues his statutory appellate remedy-the State can insure that only the most hardy defendants will brave the hazards of a *de novo* trial" See Blackledge v. Perry, 417 U.S. 21, 40 L. Ed. 2d 628, 94 S. Ct. 2098 (1974), at 27-28.

2. The defendant responds by "upping the ante" by imposing, or subjecting the petitioner to, the risk of harsher punishment; where the Respondent failed to take a *discrete* agency action over the return of petitioner's properties to the court that it is required to take and it is an obligation under 1782(c) provided a mandatory and nondiscretionary duty for which a federal court could properly compel compliance; as follows:

To obtain the return of the properties to the court which are a significant barrier to the litigation of petitioner's claims; the petitioner provide evidence tending to show the existence of the essential elements of the defense, by demonstrating either actual or presumptive vindictiveness relating to the charging decision. Finally, to the extent that plaintiff's petition can be read to claim that the additional charges were filed in order to induce a plea bargain and that such conduct is improper, the petitioner can demonstrate actual vindictiveness where:

(a) There is 'direct' evidence, such as a statement by the prosecutor evidencing the vindictive motive. (See Exhibit R).

(b) The prosecutor harbored genuine animus toward the defendant, or was prevailed upon to bring the charges by another with animus such that the prosecutor could be considered a 'stalking horse,' and where she would not have been prosecuted except for the animus for present perjured evidence to the jury under an unconstitutional state statute. **Cohen v. California**, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971) (state lacks power to punish one who has engaged in protected speech) (See Exhibit W).

Duty:

Federal regulations impose a duty on states to make an appeals procedure available to a Medicaid provider that is dissatisfied with a states finding of noncompliance that has resulted in a denial, termination, or non-renewal of its provider agreement. 42 C.F.R. 431.151(a)(2). The

appeals procedure must include the right to a full evidentiary hearing, when the state denies, terminates or refuses to renew a provider agreement. 42 C.F.R. 431.153(a). Further, that hearing must include at least the opportunity for the facility: (a) to appear before an impartial decision-maker to refute the noncompliance findings on which the adverse action was based; (b) to be represented by counsel or other representative; and (c) to be heard directly or through its representative, to call witnesses and present documentary evidence. "Government was obligated by 42 U.S.C.S. 18071(c)(3)(A) of the Affordable Care Act to make cost-sharing reduction payments to health insurers; the absence of a specific appropriation for the payments did not extinguish the obligation; the amount owed could be paid from the Judgment Fund, 31 U.S.C.S. 1304(a)(3)(A). Me. Cmty. Health Options v. United States, 142 Fed. Cl. 53, 2019 U.S. Claims LEXIS 82 (Fed. Cl. Feb. 15, 2019).

Breach of Duty:

Angels Creative Children's Therapy LLC., allege that she had a property interest in withheld payments for which she was owed due process of law because a trier of fact could find that, in the eight years that her Medicaid payments had been suspended, that suspension crossed the line from "temporary" to "indefinite." In violation of Florida state law; trespass, tortious interference with contractual and business relations, false imprisonment, and invasion of privacy, as follows:

A. Tortious interference with contractual relations claim:

1. Existed a contract subject to interference; Plaintiff had a contract with a third party which is the Agency for Persons with Disabilities ("APD") which the terms of the contract established as follows:

> "VII INTEGRATED AGREEMENTS:
> Only this Agreements, any attachments referenced, the Medicaid Provider Agreement, The Developmental Disabilities Individual Budgeting Medicaid Waiver Coverage and Limitations Handbook, which is incorporated into this agreement by reference, contain all the terms and conditions agreed upon by the parties"

A willful and intentional act of interference with the contract, was committed by the DHS Agent Jose Gonzalez upon the Affidavit For Search Warrant executed on February 2, 2017. By Tim Helms AHCA Adm. Office of the Inspector General Medicaid Program Integrity upon the letter submitted for the denied claims on February 7, 2025. By the Lieutenant Touckay McCurdy upon the Affidavit For Search Warrant executed on July 11, 2017, since that the defendant as member of the MFCU and acting together with the DHS; knowingly induced the third party to break that contract; since that the Agents, falsified police reports, fabricated evidence, withheld, concealed and/or destroyed exculpatory evidence, and/or lied under oath gave notice of malicious prosecution claim, alleging: "Billing for ABA services is a group setting is not allowable", knowing that the statements were no contained in the Handbook and were no "the terms and conditions agreed upon by the parties" since that were terms of **unpromulged rule** and AHCA

Alert, "According to Florida Medicaid Health Care Alert, dated 01/17/2014 and 10/08/2015". (See Exhibit B).

Respondent issued the Rule without statutory authority:

Plaintiffs have demonstrated a substantial likelihood of success on their claim that Secretary issued the Rule without statutory authority. A federal agency cannot act absent Congressional authorization. *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986). It cannot confer power upon itself. *Id.* "To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress." *Id.* at 374-75. Therefore, under the Administrative Procedure Act (APA), courts must "hold unlawful and set aside agency action" that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. 706(2)(C).

When reviewing an agency's construction of a statute, courts must use the ordinary tools of statutory interpretation. First, under the *Chevron* two-step framework, a court must consider "whether Congress has directly spoken to the precise question as issue." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). If Congress has directly spoken on the precise issue, the court "must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. State v. Becerra, 577 F. Supp. 3d 527 (N.D. Tex 2021).

1. The Agents withheld and/or concealed exculpatory evidence as the Medicaid Provider Type 39, No. 0174192-00, which allowed plaintiff perform "Group Therapy". **(See Exhibit C)**

   The prosecutors Darlene Simmons, Shannon Laurie, acted with the requisite scienter when she "knowingly" that the requirements are not material submitting a false claim upon a charging document of Medicaid Fraud, when they knew that the Agents withheld and/or concealed exculpatory evidence, since that was filed a "Certification of Business Records" on January 8, 2024 upon the case No.: 2017-CF-0001585-B-O, which showed the "Fee scheduled" relate to plaintiff's provider, which the terms of the contract, allowed the reimbursement of claims performed upon "Group Therapy". **(See Exhibit D).**

   On January 8, 2024 the plaintiff discovered the defendants' alleged misdeeds. "There was evidence on the record to support plaintiff's allegation that officers fabricated the (evidence) in an effort to manufacture probable cause for detention" Kingsland v. City of Miami, 382 F.3d 1220, 1226 (11th Cir. 2004). And because plaintiff as owner had shown a Fourth Amendment constitutional violation for her seizure without arguable probable cause, "the facts showed the required elements of malicious prosecution" *Grider v. City of Auburn*, 618 F.3d 1240 (11th Cir. 2010).

   The plaintiff is excused from performance under a contract if the other party is in material breach thereof, here, the question of materiality is one of degree and is

determined by weighing the consequences in the light of the actual Supreme Court decision in Universal Health Services, Inc. v. United States ex rel. Escobar, 579 U.S. 176, 188, 136 S. Ct. 1989, 195 L. Ed. 2d 348 (A misrepresentation about compliance with a statutory, regulatory, or contractual requirement must be material to the government's payment decision… if the government regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated, and has signaled no change in position, that is strong evidence that the requirements are not material).
Disputing the materiality of the performance of contract, here, there is strong evidence that the requirements are not material, since that the Lieutenant Touckay McCurdy upon the Affidavit For Search Warrant executed on July 11, 2017, stated: "In review of billing submitted by Benech. Ultimately, AHCA paid $4,968.00", **(See Exhibit E)** which the government regularly paid a particular type of claim in full despite actual knowledge that certain requirements were violated, and has signaled no change in position, that is strong evidence that the requirements were not material. The omitted information have materially weakened the probable cause determination, which the defendants has made a misrepresentation that render their claim 'false or fraudulent' under 3729(a)(1)(A).*Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 180, 136 S. Ct. 1989, 195 L. Ed. 2d 348 (2016).

2. The intentional act of interference with the contract, proximately caused the plaintiff's the following injury:

   The plaintiff suffered an injury in fact-an since that the defendants executed an invasion of a legally protected interest since that in the (eight) years that (provider)'s Medicaid payments have been suspended, that suspension crossed the line from "temporary" to "indefinite." Hence, (provider) has adequately alleged that she "has a property interest in withheld payments for which she is owed due process of law" ALEXANDRE, v. ILLINOIS DEPARTMENT OF HEALTHCARE & FAMILY SERVICES, 2021 U.S. Dist. LEXIS 176737 No. 20 C 6745 (ED. Ill. 2021), and where the plaintiff's "Rights of debtor/mental health center under Medicare and Medicaid provider agreements are property of estate" See In re Psychotherapy & Counseling Ctr., 195 B.R. 522, 8 4th Cir. & D.C. Bankr. Ct. Rep. 669, 36 Collier Bankr. Cas. 2d (MB) 1, 50 Soc. Sec. Rep. Service 836, 1996 Bankr. LEXIS 513 (Bankr. D.D.C. 1996).

   a. The plaintiff injury is concrete since that were withheld payments for which she is owed without the due process of law and particularized, as to the amount in controversy which the Agency AHCA forfeit moneys and denied the claims submitted by the provider in the amount for $ 1,447.233.55. **(See Exhibit F)**

   b. The plaintiff injury is actual or imminent, not conjectural or hypothetical, since that upon a "grant of nolle prosequi was sufficient to satisfy the requisite element of favorable termination of the criminal action… constituted a termination favorable to appellant. Thus, appellant's claims did not accrue until the charges were dismissed, (here, was on February 14, 2024) and the action was not time-barred" Uboh v. Reno, 141 F.3d 1000 (11th Cir. 1998); Since that Plaintiff "claim

alleging that (she) was prosecuted using fabricated evidence began to run when the criminal proceedings against (her) terminated in (her) favor" *McDonough v. Smith*, 588 U.S. 109, 139 S. Ct. 2149, 2157, 204 L. Ed. 2d 506 (2019).

c. The causal connection between Analyst John DiMaria's offensive behavior presenting false amounts by the claims paid and Tim Helms's liability as his supervisor for such behavior can be established upon the analytical actions performed by a non law-enforcement official since that on 11/22/2016 was executed an investigative report which was false, according to the "Notice of Intention to rely on Summary of Medicaid data" filed by the prosecution on 01/29/2024. The harassment was sufficiently widespread so as to put Tim Helms on notice of the need to act and he failed to do so, which violate federal employment laws and certainly are sufficient to rise to the level to "divest (MFCU agent John DiMaria and Tim Helms) of the qualified immunity to which they are otherwise entitled" See *Braddy v. Fla. Dept. of Labor & and Employment*, 133 F.3d 797, 802 (11th Cir. 1998). See also *Rivas v. Freeman*, 940 F.2d 1491, 1495 (11th Cir. 1991). (Under this circumstances, a law enforcement agency's failure to adequately train its officers may constitute a "policy" giving rise to governmental liability"). **(See Exhibit G)**

d. There is a causal connection between the injury and the conduct complained of-the injury, which is fairly traceable upon the challenged action of the defendant, which was not the result of the independent action of some third party not before the court. And which there was:

(1) A history of widespread abuses that puts the responsible supervisor Tim Helms on notice. **(See Exhibit H).**

(2) The supervisor's custom policy resulted in deliberate indifference of plaintiff fourth, five and fourteenth Amend. constitutional right, where the facts support the inference that the supervisor directed subordinates to act unlawfully, as follows:

- Upon the searches executed previously before the warrant were requested, **(See Exhibit I)**
- Upon Search and seizures and forfeiture of business records and trespass by a non-law enforcements in the Angels properties, according to Boyton v. State, 64So.2d 536 (Fl. 1953), O'Connor v. Ortega, 480 U.S. 709, (1987) **(See Exhibit J).**
- Upon Interview to the owner executed previously to the charges filed and in violation of the owner fifth amend right to self-incrimination **(See Exhibit K)** according to Jenny v. State, 447 So.2d 1351(Fl. 1984).
- Upon Spoliation, and destruction of exculpatory evidence, and lied under oath gave notice of business records electronically stored on the application Clinic Source" executing a subpoena without a Search warrant as required by Fla. Stat. § 394.4615(2)(c) and S.P. v. Vecchio, 162 So.3d 75(Fla.4th Dca 2014). Buttherworth v. X Hospital, 763 So.2d 467(Fl. 4th Dca 2014), where were seized business records, and upon prosecution statements, was destroyed exculpatory evidence since that the

prosecution "did not located a response from clinic source"; and lied under oath, since that the information had been previously part of the discovery as state the agent's affidavit. **(See Exhibit L).**

- Upon a Void Search Warrant which had been previously executed and which was executed to another persons and in locations different as the ordered by the warrant, where the magistrate issued the warrant in reliance on a deliberately or recklessly false affidavit, according to United States v. Leon, 468 U.S. 897(1984) executing seizure and forfeiture of properties which were not returned to the court as ordered the Search warrant, **(See Exhibit M)**
- Upon a false Search Warrant of properties to another person and in locations different as ordered by the warrant **(See Exhibit N).**
- Upon an abuse of process executing searches of plaintiff emails without a warrant , and "because the showing required under the Act fell well short of probable cause. A warrant was necessary" according to *Carpenter v. United States*, 585 U.S 296 (2018). Where plaintiff was deprived of exculpatory evidence, which were "removed such data filed" and caused "prejudices its opponent through the spoliation of evidence that the spoliating party had reason to know was relevant to litigation" *Apple Inc. v. Samsung Electronics Co.*, 888 F. Supp. 2d 976, 990-91 (N.D. Cal. 2012) . **(See Exhibit O).**
- Upon a Void Search Warrant in the plaintiff's corporative email account jbenech.abatherapy@gmail.com, which had been previously executed, where the magistrate issued the warrant in reliance on a deliberately or recklessly false affidavit, according to United States v. Leon, 468 U.S. 897(1984), where plaintiff was deprived of exculpatory evidence. **(See Exhibit P)**
- Upon a Void Search and seizure in the plaintiff's cell-phone upon the use of an usurpation of power, where the prosecution knew "sworn law enforcement but not…cross sworn as a DHS agent", according to Waters v. Dade County, 169 So.2d 505 (Fla. 3rd Dca 1964) and Smallwood v. State, 113 So.3d 724 (Fla. 2013). **(See Exhibit Q)**
- Upon the presentation of public statement injuring the plaintiff's good name, reputation, honor, and integrity at stake because of what the government is doing to her, without notice and an opportunity to be heard **(See Exhibit R)**
- Upon the presentation of false charges of information which were found "Nolle prosequi". **(See Exhibit S)**

Which the defendant's interference, in addition to being intentional, was improper in motive or means, since that:

(a) The State's witness were being paid, according **(See Exhibit T)**

(b) The plaintiff's lawyer was offered be paid by prosecution "fifty-thousand dollars, according to Transcript pag. 888-889. **(See Exhibit U)**

(c) The defendant's were all "part of a conspiracy that terminated the License Agreement immediately upon the Agency' request, which damaged provider and her owner's good name, reputation, honor, or integrity at stake, because of what the government by doing to, failed to

provide correct notice and an opportunity to be heard, before the payment suspension and definite termination of the provider agreement, since that the plaintiff was falsely arrested by the defendants which terminated her clean background check, and necessary under the provider agreement. Existed a "Casual Connection" to the intentional act of interference with the contract, since that the defendant's as members of the Medicaid Fraud Control Unit were entitled to a reward according to the Fla. Stat § 409.9203; which was established: "that the remaining 50 percent of such moneys shall be used by the Medicaid Fraud Control Unit to fund its investigations of potential violations... and any related civil actions". See *Ass'n for Retarded Citizens of Dall. v. Dallas Cty. Mental Health & Mental Retardation Ctr. Bd. of Trs.*, 19 F.3d 241, 244 (5th Cir. 1994) ("The mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization."). **(See Exhibit V)**

(d) The defendant's interference, in addition to being intentional, was improper in motive or means, since that the fraudulent charges of Medicaid Fraud were used to the prosecution under an unconstitutional State Statute and upon the use of perjured evidence and upon Spoliation, and destruction of exculpatory evidence submitted by the prosecution and the Attorney General by the defendants. Here, Petitioner was imposed a charge or sentence greater than the one that he originally-and repeatedly-charged before the plea offered by the State. As a result, Defendant's actions do give rise to a presumption of prosecutorial vindictiveness. **(See Exhibit W).**

4. The plaintiff was harmed by the defendant's actions and by the intentional act of interference with the contract, which caused actual damages or loss; as follows:

- The Agency AHCA forfeit moneys and denied the claims submitted by the provider in the amount for $ 1,447.233.55 under the defendants misrepresentation that render their claim 'false or fraudulent; causing an intentional act of interference with the contract, and proximately caused the plaintiff's injury.

- Although there is evidence in the record that "Angels" was ultimately profitable, that evidence alone prove with reasonable certainty that "Angels" lost profits due to defendant's conduct. The provider business's lost profits based on comparable profits made by the claims submitted by provider as established business according to Analytical Claim Data and Lieutenant McCurdy's affidavit; the provider had accumulate, billed and unpaid claims for $1,447.233.55 between the date of the suspension of payments on November 15, 2016 and the date of the owner detention and letter submitted of suspension of payments on February 7, 2025 which correspond to 60 work's days between the dates, the provider's profit was at time of $ 24.121,55 daily. The business's lost profits accumulate based on comparable profits until today is $ 55,358.957.25 (based in 2.295 work days), which shall accrue daily until the date of payment.

- Florida law requires that prejudgment interest accrue until the date of the judgment, according to actual the interest rate, "interest continued to run until (agency) paid its with no strings attached" Gemini Ins. Co. V. Zurich American Ins. Co., 119 F.4th 1296 (11th Cir. 2024). Defendant caused damages for $ 56,806.190.80 in liquidated damages **(i.e.,**

$24.121,55 in operation daily at the time of the termination multiplied by the 2295 work days accumulated, plus prejudgment interest).

Wherefore, the plaintiff has established that had success on the merits and present sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the plaintiff's favor.

II. Irreparable Injury:

The plaintiff showed substantial injury that is not accurately measurable or adequately compensable by money damages; As member of a federal agency, the Defendant now holds sovereign immunity from compensable damages; being now the United Stated Attorney General. The plaintiff have established that she would suffer financial injury were the court Rule for the return of her properties to the court was upheld, and where its members cannot be provided any non-equitable remedy. Moreover, The Eleventh Amendment does not bar all claims against officers of the state, however; it does not prohibit an action against a state official who has acted outside the scope of his statutory authority or, even if within his authority, pursuant to authority that is unconstitutional. *Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 102 S. Ct. 3304, 3316, 73 L. Ed. 2d 1057, 1071 (1982).

"Courts have . . . held that a plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of plaintiff's constitutional rights." *Overstreet v. Lexington-Fayette Urban County Government,* 305 F.3d 566, 578 (6th Cir. 2002). I]t is well-settled that 'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Connection Distributing Co. v. Reno,* 154 F.3d 281, 288 (6th Cir. 1998) (quoting *Elrod v. Burns,* 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976) (plurality)). Other courts have found irreparable injury in other constitutional violations. *See Covino v. Patrissi,* 967 F.2d 73, 77 (2nd Cir. 1992) (violation of the Fourth Amendment); *McDonell v. Hunter,* 746 F.2d 785, 787 (8th Cir. 1984) (violation of the right to privacy). Therefore, the Court should finds that the violation of the Plaintiff Fourth, Five and Fourteenth Amendment Clause qualifies as an irreparable injury, especially when consider in light of Plaintiff's likelihood of success on the merits.

IV. Harm to Others

The Court must also examine any substantial harm to others that would occur if a preliminary injunction is granted. Defendants will not be placed in jeopardy. Additionally, the defendant should not be injured by the granting of a temporary injunction. Which the court's order to return her properties to the court impose additional administrative burdens on the Agencies.

While the granting of the injunction will potentially harm the Agencies by increasing its administrative burden, this harm is outweighed by Plaintiff's likelihood of success on the merits

and the harm to Plaintiff if an injunction is not granted. Under the facts before the Court, any harm to others caused by the granting of a preliminary injunction is not substantial enough to justify the violation of Plaintiff's constitutional rights.

V. The Public Interest

Defendants assert that the public interest in immediately granting the injunction is negligible at best. However, Plaintiff is asserting a violation of the Fourth, Five and Fourteenth Amendment Clause. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights... The court granted a preliminary injunction against continuance of the state action until the Florida Supreme Court responded to questions of state law posed by the court about malicious prosecution" Cate v. Oldham, 707 F.2d 1176, 1190 (11th Cir. 1983).

VI. Balancing of Factors

Upon examination of all four factors, the Court should finds that a temporary injunction is appropriate in this case. Case law establishes that lawful permanent residents are a suspect class, and therefore entitled to the special protection afforded by strict scrutiny. While both the Defendant and the Agencies would be affected by the injunction, the potential harm in granting the preliminary injunction is not substantial enough to outweigh the other relevant factors. Plaintiff has demonstrated a strong likelihood of success on the merits of her due process claim. Additionally, Plaintiff has made a strong showing that her constitutional rights have been violated, which is considered to be an irreparable harm. Finally, it is in the public interest to prevent the violation of an individual's constitutional rights.

THE FINAL DHS RULE IS VOID

After making its determination, the Court should declared the Final Agencies Rule void and of no force and effect. The orderly function of the process of review of the action of an administrative agency requires that the grounds upon which the agency acted be clearly disclosed and adequately sustained. An administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained. Under the APA, a court must set aside agency actions, findings, and conclusions which are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. 706(2)(B). "[A]n order may not stand if the agency has misconceived the law." SEC v. Chenery Corp., 318 U.S. 80, 94, 63 S. Ct. 454, 87 L. Ed. 626 (1943).

CONCLUSION

The Government has a plainly defined and peremptory duty to perform the act in question to the return of the petitioner's properties, and is likely to be redressed by a favorable judicial decision, since that this court should compel to defendant or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. 1361, to remedy for unreasonable delay by the agency:

Under the APA, a court must "hold unlawful and set aside agency action" that violates the APA. 5 U.S.C. 706(2). In the Eleventh Circuit, "[v]acatur . . . is the ordinary APA remedy."...is not precluded by 1252(f)(1) and is the appropriate remedy under the circumstances. A separate declaration that the ...policy is unlawful is unnecessary because that is implicit in the Court's finding that the policy violated 706(2)(A) and (C) of the APA" Florida v. United States, 660 F. Supp. 3d 1239 (N.D. Fla. 2023).

WHEREFORE, Plaintiff, Maria Dolores Navarro Martin, this honorable court should grants the Plaintiff's motion requesting a temporary restraining order, preliminary injunction, and administrative stay of the immigration proceedings; under F.R.C.P. 65(a) enjoining Defendants in their official capacities from enforcing the provision of the Administrative Procedure Act, 5 U.S.C. 701-706 ("APA"), the Medicaid Act. **See** 42 U.S.C.S. 1396u-2(f), the Civil Asset Forfeiture Reform Act ("CAFRA"), 18 U.S.C. 983(d) *et seq.* and the non-delegation and major questions doctrines and issue a declaratory relief enjoining the defendant and compel to defendant or employee of the United States Department of Homeland Security or any agency thereof to:

(1) Perform a duty owed to the plaintiff; to return the petitioner's properties to this court;

(2) Upon the return of petitioner's properties to the court; The Court should orders that defendants are preliminarily enjoined from implementing and enforcing the deprivation of the petitioner's properties.

OATH

UNDER PENALTIES OF PERJURY, I, Maria Dolores Navarro Martin, declare that I have read the foregoing document , and I Understand its content; this document is filed in good faith and is timely filed, I understand its content in English, has potential merit, and that facts contained in the documents are true and correct.

Date: August 30, 2025

Maria Navarro Martin
Pro se Petitioner
A# [redacted]
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct original of the foregoing document has been furnished by U.S. Mail-postage prepaid to The Clerk of the District Court Southern District. I Further Certify that the clerk can e-serve a copy of this document to The Clerk of the Immigration Court and Office of the Board of Immigration appeals to the U.S. Dpt. of Justice, 950 Pennsylvania Av. NW. Office of the Attorney General, Room 5114, Washington DC. 20530-0001, to Nelson Perez, Chief Counsel. Carlos Lopez, Deputy Chief Counsel. Michael J. Gross, Esq., Assistant Chief Counsel. Office of the principal Legal Advisor. Immigration and Custom Enforcement. Department of Homeland Security. Broward Transitional Center.3900 N. Powerline Road, Pompano Beach, Fl 33073, and all the lawyer on record via e-filing court system, on this day August 30, 2025.

Respectfully Submitted:

Maria Navarro Martin
Pro se Petitioner
A#: [redacted]
Broward Transitional Center
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U.S. DISTRICT COURT - SOUTHERN DISTRICT
Clerk of Court.
701 Clematis ST. Room 202
West Palm Beach, Fl. 33401

INSPECTED

Envelope #1