

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE No. 0:25-CV-60755

**VIGDALIA M. MARTINEZ
GOMEZ,**

Petitioner/Plaintiff,

v.

JUAN AGUDELO, Interim Director,
U.S. DHS ICE ERO Miami Field
Office, *et al.*,

Respondents/Defendants.

**PETITIONER/PLAINTIFF'S EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION AND/OR TEMPORARY
RESTRAINING ORDER**

COMES NOW the Petitioner/Plaintiff, by and through undersigned counsel, and hereby files the instant Emergency Motion and respectfully states as follows:

1. The Petitioner/Plaintiff incorporates by reference the facts and procedural history as set forth in her Verified Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief. *See* D.E. 1.

2. The Petitioner/Plaintiff seek to “preserve the status quo during the course of litigation in order to prevent irreparable injury to the moving party and in order to preserve the

ability of the court to render complete relief.” *Federal Leasing, Inc. v. Underwriters at Lloyds*, 487 F. Supp. 1248, 1259 (D. Md. 1980), *aff’d*, 650 F.2d 495 (4th Cir. 1981).

3. A temporary restraining order and/or a preliminary injunction is warranted where, as here, the plaintiffs establish: (1) a substantial likelihood that they will prevail on the merits; (2) a substantial threat of irreparable injury in the injunction is not granted; (3) greater injustice to the plaintiffs if the injunction is denied than harm caused by granting the injunction; and (4) no substantial disservice to the public interest. *Osmose, Inc. v. Viance, LLC*, 612 F.3d 1298, 1307 (11th Cir. 2010); *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010); *see* Fed. R. Civ. P. 65.

4. This standard is not rigidly applied by assigning a fixed quantitative value to each of the four factors. Rather, a flexible scale – which balances each consideration and arrives at the most equitable result, given the particular circumstances of each case – is used. *Texas v. Seatrain International, S.A.*, 518 F.2d 785, 787 (5th Cir. 1975)¹.

5. The Petitioner/Plaintiff is likely to succeed on the merits because the Respondents/Defendants are detaining the Petitioner/Plaintiff to execute her deportation despite her grants of an order of supervision (“OSUP”) and deferred action following a bona fide determination of eligibility for U Nonimmigrant status, and the Respondents/Defendants have apparently revoked the Petitioner/Plaintiff’s OSUP without providing her regulatory notice or an opportunity to be heard pursuant to 8 C.F.R. §§ 241.4(l) and 241.13(i). *See* D.E. 1 at Exh. No. 1 and Exh. No. 3 (OSUP and grant of deferred action).

6. The Petitioner/Plaintiff will likely suffer irreparable harm in the absence of preliminary relief from deportation. *See, e.g., Padilla v. Kentucky*, 559 U.S. 356, 364 (2010)

¹ In *Bonner v. Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the U.S. Court of Appeals for the Eleventh Circuit adopted as binding precedent decisions of the former U.S. Court of Appeals for the Fifth Circuit handed down prior to October 1, 1981.

(“deportation is a particularly ‘severe’ penalty” (citation omitted)); *see also* D.E. 1 at Exh. 5 (Petitioner/Plaintiff’s administrative application for a stay of removal based on her pending I-918 Petition for victims of certain crimes, U.S. citizen children, non-citizen child and spouse, compliance with OSUP, prior stay application approvals, and lack of negative equities like criminal history, fraud, and threats to national security or public safety).

7. The Petitioner/Plaintiff has complied with Fed. R. Civ. Pro. Rule 65 requirements for purposes of granting a Temporary Restraining Order. Pursuant to this Rule, the Court may issue a temporary restraining order without written or oral notice to the adverse party, but only if (a) specific facts in an affidavit clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (b) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

8. As undersigned counsel has set forth in his supporting Affidavit, undersigned counsel has provided via email provided the U.S. Attorney’s office with a copy of the instant motion and a copy of the instant motion with a copy of the Petition/Complaint and Exhibits.

9. Under the circumstances of this case, the movant should not need to post a security pursuant to Fed. R. Civ. Pro. 65(c) because the Respondents/Defendants will incur no costs or damages from being wrongfully enjoined or restrained.

CONCLUSION

Based on the foregoing, the Petitioner/Plaintiff respectfully requests that this Honorable Court enter the following orders:

A. The Petitioner/Plaintiff is likely to succeed on the merits of the pending Petition/Complaint;

- B. The Petitioner/Plaintiff will suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in the Petitioner/Plaintiff's favor, and an injunction would serve the public interest;
- C. Enjoin the Respondents/Defendants from detaining and deporting the Plaintiff/Petitioner while she is the beneficiary of a grant of deferred action and while in compliance with an OSUP;
- D. The Petitioner/Plaintiff is entitled to an award of attorney's fees and costs incurred as a result of bringing this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.
- E. Grant the Petitioner/Plaintiff any other relief the Court deems necessary and proper.

Respectfully submitted this 18th day of April, 2025,

By: /s/ Andrew W. Clopman

Andrew W. Clopman, Esq.

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VERIFICATION

Undersigned counsel certifies under penalty of perjury that I am submitting this verification because I am one of the Petitioner/Plaintiff's attorneys and I have discussed the facts within this Motion with the Petitioner/Plaintiff's counsel in stay of removal proceedings before Respondents/Defendants. Pursuant to these discussions, I have reviewed the foregoing Motion and that, to the best of my knowledge, the facts therein are true and accurate.

Respectfully submitted this 18th day of April, 2025,

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By: /s/ Andrew W. Clopman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Court Clerk and to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served through the Court's ECF system to all counsel of record this 18th day of April, 2025. As no attorney from the U.S. Attorney's Office has entered an appearance yet in the instant matter, I provided a copy of the foregoing to the U.S. Attorney, Hayden O'Byrne, via email at hayden.obyrne@usdoj.gov.

Respectfully submitted,

By: /s/ Andrew W. Clopman

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