

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

CASE No. 25-CV-24650-BLOOM

CESAR R. MORA-VELAZQUEZ,

Petitioner,

v.

DIRECTOR, U.S. DHS ICE ERO
Miami Field Office, *et al.*,

Respondents.

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

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

I. INTRODUCTION

1. The Petitioner incorporates by reference the facts and procedural history as set forth in his Verified Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief. *See* ECF No. [1] at ¶¶23-64.

2. The Petitioner respectfully requests that this Honorable Court enter a temporary order preventing the Respondents from detaining him based on the removability charges that Respondents have lodged in the removal proceedings pursuant to 8 U.S.C. §§ 1227(a)(1)(C) or 1227(a)(1)(B) to prevent him from attending classes at his program of study, and a preliminary

order requiring that the Respondents release the Petitioner from custody and reinstate his student status.

3. The Respondents detained the Petitioner on May 28, 2025, and on the same day issued a Notice to Appear (“NTA”) charging him with removability by alleging he failed to maintain or comply with the conditions of the F-1 student status under which he was admitted, even though he had an active Form I-20, Certificate of Eligibility For Nonimmigrant Student Status for his lawful enrollment in a SEVIS program of study and F-1 status. *See* ECF No. [1-4] (ICE Form I-20); ECF No. [1-6] (NTA).

4. The Petitioner maintained his lawful F-1 SEVIS status until it was terminated over a month-and-a-half after his unlawful detention by the Respondents due to his inability to attend classes because he had been detained. *See* ECF No. [1] at ¶¶131-49 (Petitioner’s claims that detention is unlawful).

II. DISCUSSION

5. A temporary restraining order is a provisional remedy designed to preserve the status quo until there is an opportunity to hold a hearing on an application for a preliminary injunction. *Granny Goose Foods, Inc. v. Bhd. Of Teamsters Auto Truck Drivers Loc. No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974).

6. A temporary restraining order and/or a preliminary injunction is warranted where, as here, 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); *Winter v. Natural Res. Def. Council, Inc.*, 55 U.S. 7, 20 (2008); *see* Fed. R. Civ. P. 65.

7. A movant must satisfy all four of these requirements. *See Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (“because Wreal must meet all four prerequisites to obtain a preliminary injunction, failure to meet even one dooms [his request]”); *see also All Care Nursing Serv., Inc. v. Bethesda Mem’l Hosp., Inc.*, 887F.2d 1535, 1537 (11th Cir. 1989) (cleaned up) (“A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the ‘burden of persuasion’ as to the four requisites”).

A. Likelihood of Success on the Merits

8. Although a movant seeking a preliminary injunction has the burden of demonstrating likelihood of success on the merits, the movant is not required to prove the case in full at the preliminary injunction stage, but only such portions that enable the movant to obtain the injunctive relief sought. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

9. Within the jurisdiction of the Eleventh Circuit, courts consider the question of whether a party has a substantial likelihood of success on the merits as “generally the most important” factor in the analysis. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1232 (11th Cir. 2005).

10. The Petitioner is likely to succeed on the merits, as the Respondents have violated both his Fifth Amendment Due Process Rights and the Administrative Procedure Act in causing his unlawful detention. *See* ECF No. [1] at ¶¶69-80 (overview of Fifth Amendment Due Process Rights); *id.* at ¶¶81-92 (overview of APA); *id.* at ¶¶93-130 (detention and bond proceedings and removability).

11. The Petitioner has established that the Respondents detention violates his Fifth Amendment Due Process rights because his detention does not further the regulatory purposes of ensuring appearance at a hearing or preventing danger to the community; rather, the Petitioner has established that his detention is punitive in that the detention, and the detention alone, has rendered it impossible to maintain his F-1 nonimmigrant student status, which was active and lawful until the Respondents terminated it because of his inability to attend classes while in the Respondent's physical custody. *See* ECF No. [1] at ¶¶132-36 (discussion of punitive nature of detention and lack of comportment with any valid regulatory purpose); *Demore v. Kim*, 538 U.S. 510, 527 (2003) (Civil immigration detention must always "bear [...] a reasonable relation to the purpose for which the individual was committed."); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (immigration detention must be "nonpunitive in purpose and effect").

12. Moreover, the Petitioner has established that the Respondents violated his Fifth Amendment Due Process rights by failing to provide him with sufficient process by requiring him to bear the burden of establishing eligibility for release on bond. *See* ECF No. [1] at ¶¶77-80 (discussion of three-part test that the Supreme Court set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); ECF No. [1] at ¶¶137-45 (explaining that the *Mathews* factors weigh in the Petitioner's favor); *J.G. v. Warden, Irwin County Detention Center*, 501 F.Supp.3d 1331, 1333-41 (M.D. Ga. 2020) (finding detention, without government showing evidence to support it, violates Due Process rights).

13. Additionally, the Petitioner has established that the Respondents violated the APA by erroneously finding that the Petitioner failed to establish eligibility for relief from removal in the bond memorandum; moreover, the Respondents' reliance on 8 C.F.R. § 236.1(c)(8) and *Matter of Adeniji*, 22 I&N Dec. 1102, 1113 (BIA 1999) to assign the burden of establishing no risks of danger to the community or flight risk on the Petitioner in bond motion proceedings was arbitrary,

capricious, and not due any deference. *See* ECF No. [1] at ¶¶81-92 (discussion of APA), ¶¶93-108 (discussion of bond proceedings), and ¶¶146-49 (claim of APA violation).

B. Irreparable Harm

14. The Petitioner will likely suffer actual and imminent irreparable harm in the absence of temporary and preliminary relief as his unlawful detention provides the only legal basis for terminating his SEVIS record because his unlawful detention renders it impossible to attend classes at his program of study to maintain nonimmigrant student status. *See* ECF No. [1] at ¶¶109-130 (discussion of maintenance of and grounds for terminating student status); *see also Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (irreparable harm must be “neither remote nor speculative, but actual and imminent”).

15. A movant seeking to demonstrate irreparable harm must establish “that the injury cannot be undone through monetary remedies.” *Winmark Corp. v. Brenoby Sports, Inc.*, 32 F.Supp.3d 1206, 1223 (S.D. Fla. 2014).

16. “In the immigration context, unlawful detention is a sufficient irreparable harm.” *Arias Gudino v. Lowe*, 785 F.Supp.3d 27, 46 (M.D. Pa. 2025).

17. “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

18. The detention causes the Petitioner to suffer irreparable harm, as “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).

19. Accordingly, “[f]reedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

20. Moreover, the Petitioner's detention is causing irreparable harm because it is forcing him to be separated from his five-year-old daughter. *See* ECF No. [1-5] (copy of birth certificate and Form I-20 indicating his daughter resides in Florida with F-2 nonimmigrant status); *Farmworker Ass'n of Fla., Inc. v. Moody*, 734 F.Supp.3d 1311, 1339 (S.D. Fla. 2024), *supplemented*, No. 23-CV-22655, 2024 WL 5459522 (S.D. Fla. May 23, 2024), and *modified sub nom. Farmworker Ass'n of Fla., Inc. v. Uthmeier*, No. 23-CV-22655, 2025 WL 775558 (S.D. Fla. Mar. 11, 2025) (citing *Make the Road N.Y. v. Pompeo*, 475 F.Supp.3d 232, 268 (S.D.N.Y. 2020) (Movants "have thus likewise demonstrated irreparable harm in the form of 'indefinite family separation,' which many courts around the country have 'recognized ... as a form of irreparable injury'"); *see also Milligan v. Pompeo*, 502 F.Supp.3d 302, 321 (D.D.C. 2020) (cleaned up) ("[S]eparation from family members is an important irreparable harm factor.")).

21. "Further, threatened removal satisfies the irreparable injury requirement, including injuries such as separation from family and homes, uncertainty about legal status, and difficulties building a new life, such as healthcare and employment." *Arias Gudino*, 785 F.Supp.3d at 46.

C. Balance of Equities and Public Interest

22. The balance-of-the-harms and public interest elements merge where the government is the party opposing injunctive relief. *See Swain v. Junior*, 961 F.3d 1276, 1293 (11th Cir. 2020); *Nken v. Holder*, 556 U.S. 418, 435 (2009).

23. Regarding the third and fourth factors, "there is no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *Florida v. Dep't of Health and Hum. Servs.*, 19 F.4th 1271, 1315 (11th Cir. 2021)

(Lagoa, J., dissenting) (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)).

III. CONCLUSION

24. To permit the Respondents to continue to detain the Petitioner would authorize a policy whereby the Respondents could prevent nonimmigrant students from being able to continue their course of study and maintain status by detaining students despite any risk to the community or flight risk; this policy would provide the Respondents with a roadmap to rendering nonimmigrant students deportable after many courts have prevented the Respondents from achieving the same goal by unlawfully terminating SEVIS records. *See Shaik v. Noem*, 25-1584 (JRT/DJF), 2025 WL 2307619, at *2 (D. Minn. Aug. 11, 2025) (describing “district courts around the country issu[ing] a cascade of [Temporary Restraining Orders] blocking DHS from arbitrarily terminating student statuses”); *Ajugwe v. Noem*, 8:25-cv-982-MSS-AEP, 2025 WL 1370212, at *7 (M.D. Fla. May 12, 2025) (explaining that the DHS “attempt[ed] to render noncitizens with nonimmigrant status deportable by causing them to fail to maintain status”); *Doe v. Trump*, -- F.Supp.3d ----, 2025 WL 1467543, at **2-5 (N.D. Cal. May 22, 2025) (modified by *Doe v. Trump*, 2025 WL 2430494 (N.D. Cal. Aug. 22, 2025)) (nationwide preliminary injunction enjoining the DHS from *inter alia* unlawfully terminating SEVIS records after the DOS revoked F-1 nonimmigrant visas or “arresting and incarcerating any of the named Plaintiffs in these cases and similarly situated individuals nationwide pending resolution of these proceedings”).

25. The Petitioner 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.

26. 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 and Exhibits.

27. 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 will incur no costs or damages from being wrongfully enjoined or restrained.

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

- A. The Petitioner is likely to succeed on the merits of the pending Petition/Complaint;
- B. The Petitioner will suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in the Petitioner's favor, and an injunction would serve the public interest;
- C. Temporarily restrain the Respondents from continuing to detain the Petitioner and preventing him from being able to maintain his nonimmigrant student status;
- D. Require the Respondents to reinstate the Petitioner's student status, which he maintained at all times prior to his unlawful detention;
- E. Award the Petitioner 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; and
- F. Grant the Petitioner any other relief the Court deems necessary and proper.

Respectfully submitted this 15th day of October, 2025,

By: /s/ Andrew W. Clopman

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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's attorneys and I have discussed the facts within this Motion with the Petitioner's counsel in removal proceedings before Respondents. 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 15th day of October, 2025,

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 15th day of October, 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's Office via email as I explained in my Affidavit.

Respectfully submitted,

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