

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

M.C.H.L.)
A# [REDACTED])
)
Petitioner,)
)
vs.)
)
DAVE ROBERSON, *in his official capacity as*)
Sheriff of Floyd County Detention Center; and)
LADEON FRANCIS, *Field Office Director for*)
ICE Atlanta Field Office, and)
TODD LYONS, *in his official capacity as*)
Acting Director of ICE; and)
KRISTI NOEM, *DHS Secretary; and*)
PAMELA BONDI, *U.S. Attorney General.*)
)
Respondents.)
_____)

CASE NO.:

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

COMES NOW Petitioner, M.C.H.L. (A# [REDACTED]) and files this
Emergency Motion for Temporary Restraining Order and/or Preliminary
Injunction. Petitioner hereby requests the Court to issue a temporary
restraining order and/or preliminary injunction, pursuant Fed. R. of Civ. P. 65,
to “prevent irreparable injury so as to preserve the court's ability to render a
meaningful decision on the merits,” and “to insure that a remedy will be
available.” *U.S. v. State of Ala.*, 791 F.2d 1450, 1459 (11th Cir. 1986), *citing*

Corrigan Dispatch Co. v. Casa Guzman, S. A., 569 F.2d 300, 302 (5th Cir. 1978).

See also *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974)).

Despite a neutral adjudicator's order of release on an Order of Recognizance (OREC), Petitioner remains confined despite the adjudicator's finding that she is neither a danger nor a flight risk. Specifically, on November 8, 2025, Petitioner was detained by ICE while traveling to visit her father, who was sick with high blood pressure. At that time, ICE stopped her vehicle during a traffic operation for driving without a license and speeding, and Petitioner was taken into custody.

Petitioner was detained in a public area without notice or the opportunity to be heard, in violation of agency rules. She was transported to Floyd County Detention Center, located in Rome, Georgia, where he has been detained ever since. This detention was conducted under false pretenses and was a violation of both procedural and substantive due process rights, as no findings were made regarding her compliance with the OREC or any danger she posed.

Petitioner faces ongoing harm due to the unlawful nature of her detention. Because no administrative remedy exists to lift the automatic stay or to enforce the Immigration Judge's order, judicial intervention is necessary at this time to prevent irreparable harm.

Through the instant Motion, Petitioner seeks to restrain U.S. Immigration and Customs Enforcement (ICE) from continuing to unlawfully detain her and to preserve the status quo while this Court considers the merits of his Writ of Habeas Corpus. Specifically, Petitioner asks this Court to enforce the Immigration Judge's previous order authorizing his release under an Order of Recognizance (OREC), which DHS unilaterally nullified by detaining her on August 8, 2025.

Petitioner has fully complied with her OREC for over 2 years, demonstrating her reliability and non-flight risk. Petitioner has attended all required check-ins with ICE, obtained a Social Security Number and Employment Authorization Document (EAD), and has no new criminal convictions. Despite this, she has been detained under unlawful circumstances since November 8, 2025. Petitioner is being detained in violation of the Due Process Clause and the statutory framework that governs her detention and release, leading to ongoing hardship.

Petitioner further seeks to ensure she remains available to prosecute her pending immigration proceedings, for which she has a hearing in to pursue her asylum application in 2026. By continuing to detain Petitioner, despite the government's previous order authorizing her release under an Order of Recognizance (OREC), Respondents effectively nullify that judicial determination and risk mooted this habeas action. If unrestrained,

Respondents will insulate their unlawful actions from judicial review, leaving Petitioner confined indefinitely without lawful basis and unable to prepare for her upcoming cancellation of removal hearing and properly defend against her removal.

Because DHS relies solely on an ultra vires regulation to override a lawful judicial determination and has not committed to releasing Petitioner despite a previous order authorizing her release under an Order of Recognizance (OREC), this Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction is necessary, just, and of an imminent nature. In addition, there is no remedy at law that can adequately compensate Petitioner for the consequences of her continued unlawful detention, including deterioration of her mental and physical health, separation from her partner and child, and interference with her ability to prepare and present his immigration case. Each day of confinement causes irreparable harm, deprives her of liberty in violation of the Constitution, and frustrates the statutory scheme that entrusts custody determinations to Immigration Judges.

Despite filing this instant action on November 12, 2025 Petitioner still remains unlawfully detained. “The writ, or order to show cause . . . shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.” § 2243.

This Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction is necessary, just, and of an imminent nature because DHS through ICE is detaining Petitioner contrary to law and the U.S. Constitution, causing her significant hardship. Petitioner's continued unlawful detention is justifying the need for Court intervention to prevent irreparable harm. In addition, there is no remedy at law that can adequately compensate Petitioner for the consequences of her continued unlawful detention and if continued could lead to irreversible impacts.

Immediate injunctive relief is essential because Plaintiff has a substantial likelihood of success on the merits of the complaint; Plaintiff will suffer irreparable harm in the absence of injunctive relief; there is no adequate remedy available at law; the balance of hardships favor Plaintiff, and the requested injunctive relief will not harm the public interest. The facts and legal arguments supporting this motion are set forth in detail Petitioner's Memorandum of Authorities in Support of Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction filed contemporaneously herewith.

Should Respondents' unlawful detention continue, Petitioner will remain confined indefinitely despite an Immigration Judge's finding that she is not a danger or flight risk and continue to be separated from her family. These harms include the loss of liberty itself, which gives rise to a Due Process

claim, and injury to his fundamental interest in family unity. This loss will cause tremendous hardship to Petitioner and her family and frustrates the statutory scheme that entrusts custody determinations to neutral adjudicators. The basis for this Motion is set forth in the attached Memorandum of Authorities.

WHEREFORE, for the reasons set forth in the accompanying brief, Petitioner respectfully prays that the Court grant his Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction through which he requests the Court issue the following orders and set the case for a hearing on the instant Motion:

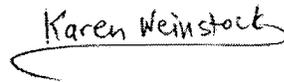
- (1) Enjoin Petitioner's transfer outside this District and removal from the United States, and prohibit any change of Petitioner's immediate custodian, without prior leave of Court while this action is pending, pursuant to 28 U.S.C. §§ 1651(a) and 2241;
- (2) Order Respondents to immediately release Petitioner from custody without any conditions imposed on Petitioner's liberty and restore her prior OREC conditions unlawfully revoked;
- (3) Enjoining Respondents from modifying unconditional release without prior leave of Court (including, but not limited to, electronic monitoring devices);
- (4) Declare that Petitioner is not an "applicant for admission" 1225(b),

seeking admission” or an “arriving alien” and that Petitioner’s detention is unlawful;

- (5) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
- (6) Declare that Respondents’ actions, as set forth herein, and Petitioner’s continued detention violate the Due Process Clause of the Fifth Amendment, the INA and its implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine;
- (7) In the alternative, order Respondents to conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 3 days, where the government bears the burden to prove, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community;
- (8) Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225;
- (9) Enjoin Respondents from re-detaining Petitioner in the future unless she has committed a new violation of any federal, state or local law, or has failed to attend any properly noticed immigration or court hearing or is subject to detention pursuant to a final order of removal;
- (10) Award Petitioner reasonable attorney’s fees and costs;

- (11) Waive or set a nominal security under Fed. R. Civ. P. 65(c); and
- (12) Grant such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully submitted this 13th Day of November, 2025



Karen Weinstock
Admission To Be Filed
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

M.C.H.L.

A# 

Petitioner,

vs.

DAVE ROBERSON, *in his official capacity as Sheriff of Floyd County Detention Center*; and
LADEON FRANCIS, *Field Office Director for ICE Atlanta Field Office*, and
TODD LYONS, *in his official capacity as Acting Director of ICE*; and
KRISTI NOEM, *DHS Secretary*; and
PAMELA BONDI, *U.S. Attorney General*.

Respondents.

CASE NO.:

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Century Schoolbook, 13 point font.

/s/ Karen Weinstock
Karen Weinstock
Admission Application to be filed
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

M.C.H.L.)

A#)



Petitioner,)

vs.)

DAVE ROBERSON, *in his official capacity as*)

Sheriff of Floyd County Detention Center; and)

LADEON FRANCIS, *Field Office Director for*)

ICE Atlanta Field Office, and)

TODD LYONS, *in his official capacity as*)

Acting Director of ICE; and)

KRISTI NOEM, *DHS Secretary; and*)

PAMELA BONDI, *U.S. Attorney General.*)

Respondents.)

CASE NO.:

**MEMORANDUM OF AUTHORITIES IN SUPPORT OF
PETITIONER’S EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

I. INTRODUCTION AND PROCEDURAL HISTORY

By and through her Counsel, Petitioner files this Memorandum of Authorities in Support of Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction. Petitioner is detained at the Floyd County Detention Center, Rome, Georgia, by the Department of Homeland Security (DHS or the Department), specifically Immigration and Customs Enforcement (ICE), despite them having no lawful reason to detain Petitioner.

Additionally, courts have recognized their equitable authority to grant injunctive relief restoring the status quo ante even before the defendant has filed a responsive pleading to the amended complaint, particularly under extraordinary circumstances. Many courts have held that equity will, at times, restore the status quo ante pending ultimate resolution of the controversy, even before the defendant has an opportunity to respond to the amended claims. The remedy is not granted except under very extraordinary circumstances, but the mere filing of an amended complaint does not, in itself, negate the court's power to issue such relief. See all the cases cited below in Section IV "Court's Power to Restore Petitioner to Status Quo Ante."

Courts have held that the status quo ante to be achieved by injunctive relief is the position **the parties held at the time of the last uncontested act between them, not simply the state of affairs at the time the original complaint was filed.**

Since the Respondents are responsible for intervening events, the court is not deprived of its authority to compel the defendant to undo what has been wrongfully done. *See, e.g., Does v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251 (10th Cir. 2024). Injunctive relief remains appropriate when a party faces a constant threat that a challenged policy or conduct will be reinstated or enforced in the future. *Id.* Based on the foregoing, Petitioner should not be detained and should immediately be released.

II. LEGAL STANDARD

A court may issue a temporary restraining order upon notice to the adverse party. Fed. R. Civ. P. 65(b). It is well settled law that a TRO “is an extraordinary remedy never awarded as of right.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). A movant seeking a temporary restraining order or preliminary injunction must establish each or all of the four Winter elements are satisfied: (1) a likelihood of success on the merits, (2) that the movant is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in the movant’s favor, and (4) that an injunction is in the public interest. *Id.* at 20. See also *Café 207, Inc. v. St. Johns Cnty.*, 989 F.2d 1136, 1137 (11th Cir.1993); *Schiavo v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir.2005).¹

A preliminary injunction is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit. The harm must be neither remote nor speculative, but actual and imminent, and cannot be fully rectified by the final judgment after trial. The daily loss of liberty and potential swift removal from the United States of Petitioner constitutes irreparable harm.

¹ See also *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974). TRO is required to “prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits,” and “to insure that a remedy will be available.” *U.S. v. State of Ala.*, 791 F.2d 1450, 1459 (11th Cir. 1986), citing *Corrigan Dispatch Co. v. Casa Guzman, S. A.*, 569 F.2d 300, 302 (5th Cir. 1978).

The Eleventh Circuit, like other circuits, also recognizes the principle of restoring **the status quo ante as a form of equitable relief**. See *Lewis v. Federal Prison Industries, Inc.*, 953 F.2d 1277, 1286 (11th Cir. 1992) (an employer's discriminatory acts disable an employee, he/she may seek equitable relief, including changes in working conditions, to restore the status quo ante). The Fifth Circuit, like other circuits, also recognizes the principle of restoring **the status quo ante as a form of equitable relief**. See *Overstreet v. El Paso Disposal, LP*, 625 F. 3d 844 (5th Cir. 2010) (affirming of reinstating workers, to pre-strike level of union support, pending the outcome of an NLRB proceeding to prevent irreparable harm to the union's bargaining power). Restoration to the quo ante refers to restoring the parties to the position they occupied **before** the alleged wrongful act occurred and is the only available and equitable remedy in some cases, including Petitioner's.

Petitioner recognizes that injunctive relief is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief and that the possibility of harm or remote harm would not suffice. To obtain a temporary restraining order and/or a preliminary injunction, Petitioner must establish: “(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction [is] not granted; (3) that the threatened injury to the plaintiff outweighs the harm an injunction may cause the defendant[s]; and (4) that granting the injunction would not

disserve the public interest.” *Tepper v. Miller*, 82 F.3d 989, 992-93 n.3 (11th Cir. 1996), *referencing Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir.1994). As will be shown below, all four considerations weigh in favor of granting Petitioner the Order he seeks.

The plain terms of 8 U.S.C. § 1252(f)(1) proscribe the Court’s ability to issue injunctive relief. Habeas relief has long been recognized as a unique and district remedy. The Court has broad discretion to fashion appropriate remedies to dispose of habeas corpus matters “as law and justice require.” 28 U.S.C. § 2243. *See Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). A “habeas corpus proceeding must not be allowed to fonder in a ‘procedural morass’” and the “power of federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involves.” *Harris v. Nelson*, 394 U.S. 286, 291-2 (1969). That responsibility is greatest where, as here, the Court is reviewing “detention by executive authorities without judicial trial.” *Brown v. Allen*, 344 U.S. 443, 533 (1953); *Boumediene v. Bush*, 553 U.S. 723, 783 (2008).

This Court is requested, and authorized, to issue a mandatory TRO or preliminary injunction compelling Defendants to take ***affirmative*** action, rather than restricting them from altering the status quo. *See Johnson v. Interstate Power Co.*, 187 F. Supp. 36 (D.S.D. 1960) (“a federal district court, in exercising its general equity jurisdiction, has an inherent power to grant mandatory injunctions”) (citing *Ramsburg v. American Investment Company*

of Illinois, 231 F.2d 333 (7th Cir. 1956); *Bowles v. Skaggs*, 151 F.2d 817 (6th Cir. 1945); *In re Lennon*, 166 U.S. 548, 17 S. Ct. 658 (1897)). Although a TRO or injunction that orders Defendants “to take affirmative action is proper only in “rare instances” due to concern over giving a party the full relief it seeks prior to adjudication on the merits, *Harris v. Wilters*, 596 F.2d 678, 680 (5th Cir. 1979)), ordering affirmative action by Defendants is proper in this instance for the following reasons:

The function of preliminary injunctive relief is to **prevent irreparable harm and preserve the status quo ante pending final adjudication.** Courts have repeatedly emphasized that, where the status quo itself is causing irreparable injury, it may be necessary to alter the situation to prevent further harm, even if this requires affirmative action. In *Austin v. Univ. of Fla. Bd. of Trs.*, 580 F. Supp. 3d 1137 (N.D. Fla. 2000), the court granted a preliminary injunction to restore the status quo ante, reasoning that the focus must be on the prevention of injury, not merely the preservation of the status quo. The case involved constitutional rights, including the right to associate and freedom of speech. The court explicitly stated that if the currently existing status quo is causing irreparable injury (policy preventing first amendment rights), it is necessary to alter the situation so as to prevent the injury, and restoration to the last uncontested status between the parties is appropriate.

Courts have held that the status quo ante to be achieved by injunctive relief is the position **the parties held at the time of the last uncontested act between them, not simply the state of affairs at the time the original complaint was filed.** Thus, if the complaint seeks to address the same wrongful conduct and the preliminary relief is still necessary to prevent irreparable harm, the motion should be granted to restore Petitioner to the status quo ante before the government unlawfully detained him without due process or bond availability.

Since the Respondents are responsible for intervening events, the court is not deprived of its authority to compel the defendant to undo what has been wrongfully done. *See, e.g., Does v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251 (10th Cir. 2024). Injunctive relief remains appropriate when a party faces a constant threat that a challenged policy or conduct will be reinstated or enforced in the future. *Id.* The court must consider whether irreparable harm persists, and whether restoration of the status quo ante is necessary to prevent ongoing injury. The equitable powers of the court and the purpose of preliminary injunctions—to prevent harm and preserve meaningful remedies—support the continued consideration of such motions and relief.

Furthermore, Petitioner's case involves the rare circumstance in which Petitioner and her family will suffer severe, irreparable and permanent injury in the absence of court-mandated agency action, while Respondents will suffer

little inconvenience because they will be ordered to perform that which they are already required to do under the law and their own regulations and procedures. The only “harm” to Respondents is that they would not be able to unlawfully detain her. The rare magnitude of the harm that Petitioner and her family will suffer, the imminence of that substantial harm, and the total inability to remedy such harm if the Court does not order Respondents to act immediately and release Petitioner, warrants the issuance of a TRO and/or preliminary injunction in this instance.

III. ARGUMENT

Petitioner need not establish a certainty of success but must make a clear showing that she is likely to succeed at trial. Petitioner must demonstrate more than just a “possibility” of irreparable harm. “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a ‘clear showing’ that the plaintiff is entitled to relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008).

As will be shown below, Petitioner meets all 4 *Winter* criteria and merits the grant of a Temporary Restraining Order and/or Preliminary Injunction. Petitioner is likely to succeed on the merits of her claims because her continued detention due to an ultra vires agency action and in violation of her Due Process rights under the U.S. Constitution violates both the law and the

courts nationwide bolster the Petitioner's argument that these agency interpretations exceed their legal authority and lack support under the INA. The undersigned counsel is not aware of any conflicting authority. However, even if such authority exists, the predominant judicial consensus from various district courts across the United States supports the Petitioner's position. See TRO granted by Judge Cohen in *Rojano Gonzalez v. Sterling*, Case 1:25-cv-06080-MHC (ECF Dkt. 18)².

(2) Due Process Violations.

Respondents violated the Due Process Clause of the Fifth Amendment. In this instant case, Petitioner asserts that the continued detention without a bond hearing violates substantive due process under the Fifth Amendment, as recognized by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Jennings v. Rodriguez*, 584 U.S. 281, 289 (2018). The government may detain only to prevent flight or danger, and Petitioner's detention serves no such purpose. Due process requires protections from agency abuses or unlawful legal interpretation that contradicts the plain language of the INA, the same law under which these agencies operate, especially in cases involving deprivation of liberty.

² See also additional authorities from other courts within the 11th Circuit: *J.A.M. v. STREEVAL, et al.*, NO. 4:25-cv-342 (CDL), 2025 WL 3050094 (M.D. GA, Nov. 1, 2025); *Aguirre Villa v. Warden Normand, et. al*, NO. 5:25-cv-89, 2025 WL 3095969 (S.D. GA, Nov 4, 2025) *Aguilar Merino v. Ripa*, No.: 25-cv-23845, 2025 WL 2941609 (S.D. FL, Oct. 15, 2025) and *Alvarez Puga v. Assistant Field Office Director Krome*, No.: 25-CV-24535, 2025 WL 2938369 (S.D. FL, October 15, 2025)

Moreover, dozens of cases from district courts nationwide support the Petitioner's argument that these agency interpretations violate Due Process. The undersigned counsel is not aware of any conflicting binding authority. Even if conflicting authority exists, the predominant judicial consensus from various district courts across the United States supports the Petitioner's position, as well as the plain reading of the INA.

Furthermore, Petitioner's Order of Release on Recognizance (OREC) was unlawfully revoked as detailed in the Complaint (ECF Dkt. 1).

(3) Administrative Procedure Act (APA) Violations.

The Complaint (ECF 1) asserts that the Petitioner's detention was arbitrary and capricious, violating the APA. The Respondents failed to consider less restrictive alternatives and did not provide a reasoned basis for their decision, which supports the claim of arbitrary action. Moreover, dozens of cases from district courts nationwide support the Petitioner's argument that these agency interpretations violate the APA, as well as the plain reading and interpretation of the INA.

(4) *Accardi* and regulatory violations.

In this present case, Respondents violated the *Accardi* doctrine by failing to follow their own regulations and procedures, as required by *Accardi* and its progeny. The recent policy shifts by ICE and EOIR, as outlined in ICE's July 2025 memorandum and EOIR's *Yajure Hurtado* decision, violate the

Accardi doctrine by failing to adhere to established agency regulations and procedures. The *Accardi* doctrine mandates that federal agencies must follow their own rules and regulations, particularly when these rules are designed to protect individual rights.

By reclassifying individuals who entered without inspection apprehended in the interior of the United States as “applicants for admission” or as “arriving aliens” subject to mandatory detention under § 1225(b)(2), ICE and EOIR have disregarded the procedural safeguards and discretionary bond provisions outlined in § 1226(a). ICE’s and EOIR’s reclassification policy effectively nullifies § 1226(a)’s statutory provision by subjecting all noncitizens to mandatory detention, regardless of their actual circumstances. This interpretation is contrary to the plain language of the INA and disrupts decades of settled law, which recognized the distinct legal status and rights of noncitizens apprehended in the interior. This departure from established regulations and legal standards not only contravenes the statutory framework of the INA, but also undermines the procedural rights and protections intended to ensure fair and consistent treatment of noncitizens, warranting immediate judicial intervention. *See Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Over two hundred cases from district courts nationwide referenced in the Complaint support the Petitioner’s argument that these agency interpretations violate the *Accardi*

doctrine, as well as the plain reading and interpretation of the INA and Respondents' regulations.

B. Petitioner is Likely to Suffer Irreparable Harm.

Unlawful physical detention is a paradigmatic irreparable injury; each additional day of confinement compounds the deprivation of liberty and cannot be remedied by money damages. Continued detention also impairs access to counsel and the ability to prepare her case. Collateral harms—separation from her family, her husband and two young children, interruption of Petitioner's life and, as applicable, ability to maintain or renew employment—further underscore the severity of the injury. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (loss of constitutional freedoms constitutes irreparable injury).

Petitioner must overcome the presumption that a preliminary injunction will not be issued when the harm suffered can be remedied by money damages at the time of judgment. *Hughes Network Sys., Inc. v. Inter Digital Commc'ns Corp.*, 17 F.3d 691, 693 (4th Cir. 1994). However, no amount of monetary damages can remedy Petitioner's unlawful detention, **deprivation of liberty** and **separation** from her family which includes young children. Petitioner is a law abiding noncitizen who seeks liberty and justice, under the laws of the United States, yet she is detained unlawfully with hardened criminals. Petitioner is neither a flight risk nor a danger to the community and continued detention without a prompt hearing constitutes irreparable harm, as it

involves the loss of freedom and potential prolonged detention while her removal case remains pending, which could take years in the current immigration court system backlog. Irreparable harm is imminent and actual, as continued unlawful physical detention constitutes a paradigmatic irreparable injury that cannot be remedied by money damages or a final judgment, with each additional day compounding the deprivation of liberty, separation from family, and inability to work. **There is no adequate remedy at law to compensate Petitioner for these harms.** The only way to prevent ongoing harm is immediate injunctive relief.

C. Balance of Equities.

The balance of equities tips sharply in Petitioner's favor because the harm to the Petitioner from continued unlawful detention outweighs any potential harm to the government. Petitioner has stable employment, family, and community ties and no new adverse factors. Enjoining Respondents from unilaterally, illegally, and unconstitutionally detaining Petitioner under 8 U.S.C. § 1225(b)(2) simply preserves the status quo ante of Petitioner release and liberty prior to Petitioner's unlawful detention does not hinder ICE's ability to present evidence to this Court that Petitioner is either a flight risk or danger to the community, which they have not alleged nor can prove.

Moreover, the government's interest in detaining the Petitioner without due process is minimal compared to the Petitioner's fundamental right to liberty.

The government's interest in detention is significantly outweighed by its failure to adhere to established law and procedure; and unnecessary detention wastes valuable financial and administrative resources. Less-restrictive alternatives, such as continued release on recognizance, were available, but were not considered. Granting a TRO would prevent the government from expending resources defending against habeas petitions that could be avoided by following the law (distinction between Petitioner and an "arriving alien").

By contrast, each additional day of civil confinement inflicts grave, irreparable harm to Petitioner's liberty; separates her from her family which includes two young children; and disrupts employment and medical needs. Enjoining automatic or non-merits-based detention and restoring neutral and constitutional process with safeguards against agency abuse merely preserves the status quo ante and does not impede DHS's presentation of flight risk or danger to the community.

D. Public Interest.

The public interest unequivocally aligns with granting the requested relief. It is served not by allowing arbitrary detention, but by upholding constitutional and statutory rights, ensuring due process, and compelling government agencies to adhere to their own established rules and international obligations. The public interest is served by upholding the rule of law and constitutional rights, ensuring that civil detention comports with

due process and that government agencies comply with their own regulations, thereby conserving scarce detention resources for those who present genuine danger or flight risk. Arbitrary detention undermines public trust in government and the rule of law. Ensuring that agencies follow their own procedures protects individuals from arbitrary government action and promotes fairness within the legal system. Requiring DHS to seek individualized relief rather than invoking an automatic detention mechanism promotes accurate decision-making and conserves governmental resources.

The public interest favors adherence to lawful, individualized process; conservation of scarce detention resources for individuals who present genuine danger or flight risk; confidence in the legal system; and upholding fundamental due process protections. Requiring DHS to use those tailored mechanisms—rather than relying on non-merits automatic detention for all—advances the rule of law and efficient resource allocation. As-applied relief here maintains the integrity of the immigration adjudication system without broad disruption.

It should be noted that the third and fourth factors above merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the balance of equities and the public interest tilt sharply in favor of the issuance of at TRO, as the public has a significant stake in the Government's compliance with the law. *See, e.g., League of Women Voters v.*

Newby, 838 F.3d 1, 12 (D.C. Cir. 2016) (“There is generally 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.”)

While the public has a general interest in the “prompt execution of removal orders,” it also has an interest in “preventing [noncitizens] from being wrongfully removed.” *See Nken*, 556 U.S. at 434-35. The balance of equities and consideration of the overall public interest strongly weigh in favor of granting the instant Motion, primarily because imposition of the preliminary injunction will not impose a significant burden on Respondents’ ability to enforce immigration laws and make discretionary decisions concerning removal actions if it does so in compliance with existing laws, regulations, and the U.S. Constitution.

E. Petitioner’s Continued Detention Violates Due Process Rights.

The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person—citizen or noncitizen—of liberty without fair procedures and a meaningful opportunity to be heard. *See Reno v. Flores*, 507 U.S. 292, 306 (1993). The Supreme Court has recognized that “[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.” *Zadvyada v. Davis*, 553 U.S. 678, 690 (2001) (citation omitted).

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*. See 424 U.S. 319 (1976). Pursuant to *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

Applying the *Mathews v. Eldridge* test, Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme—considering the prior determination by the same agency that Petitioner is not a flight risk and does not pose a danger to the community, which have not changed. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Petitioner is being held at a county jail in the same conditions as criminal inmates and is far from family.

Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator. *Marcello v. Bonds*, 39 U.S. 302, 305-306

(1955). The risk of erroneous deprivation of liberty is high because as ICE officers and even immigration judges are no longer neutral as they support mandatory detention for everyone in Petitioner's circumstances. The risk of deprivation is high because ICE is violating the agency's own rules, regulations, and the INA under which it operates. Petitioner's right to liberty and to be free from unjustified detention is paramount. In conclusion, all three *Mathews* factors favor Petitioner's position that procedural due process rights under the Fifth Amendment were violated.

The Supreme Court has recognized that once an individual has received a determination of entitlement to liberty, the government's ability to override that determination is subject to heightened scrutiny. See *Mathews*, 424 U.S. at 335 ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"). Because she has been living in liberty for the past 12 years in the United States and this liberty has not been taken away, it deprives the Petitioner of a meaningful remedy, as the judicial order is rendered ineffective by administrative fiat. Petitioner was not afforded a full hearing or notice before any deprivation occurred. For all these reasons mentioned herein, Petitioner has shown she is likely to succeed on the merits of Petitioner's claim that detention is unconstitutional, in addition to his claim that the agency actions are ultra vires and violate the *Accardi* doctrine. See generally Complaint, ECF Dkt. 1.

IV. RESTORATION OF THE STATUS QUO ANTE: LEGAL BASIS AND APPLICATION

A. Definition and Legal Authority for Restoration

Restoration of the status quo ante is an equitable remedy designed to return the parties to the position they occupied prior to the alleged wrongful act. Courts employ this remedy to prevent irreparable harm and to ensure that the rights of the parties are preserved pending final adjudication. The status quo ante is not merely the state of affairs at the time the complaint was filed, but rather the last uncontested status between the parties preceding the controversy. This principle is well-established in federal jurisprudence and is particularly appropriate where the harm is ongoing and cannot be remedied by monetary damages.

Federal courts possess inherent equitable power to issue mandatory injunctions restoring the status quo ante, even before a defendant has filed a responsive pleading, especially under extraordinary circumstances. The Supreme Court has recognized that “where a defendant with notice in an injunction proceeding completes the acts sought to be enjoined the court may by mandatory injunction restore the Status quo.” *Porter v. Lee*, 328 U.S. 246, 251 (1946). Similarly, in *In re Lennon*, 166 U.S. 548 (1897), the Court affirmed the authority to restore the status quo ante pending ultimate resolution of the controversy.

Circuit courts have consistently upheld this principle. The Eleventh Circuit, for example, has affirmed orders restoring parties to the status quo ante, emphasizing that the remedy is appropriate to prevent self-help measures that undermine statutory procedures and the rights of the parties. See *Reynolds v. Roberts*, 207 F.3d 1288 (11th Cir. 2000); *International Ass'n of Machinists and Aerospace Workers v. Transportes Aereos Mercantiles Pan Americanos, S.A.*, 924 F.2d 1005, 1011 (11th Cir. 1991). Other circuits have similarly held that a preliminary injunction may restore, rather than merely preserve, the status quo, even when the nonmoving party has disturbed it. See *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012); *Bastian v. Lakefront Realty Corp.*, 581 F.2d 685, 691 (7th Cir. 1978); *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1013 (10th Cir. 2004).

The status quo to be preserved is the “last uncontested status between the parties which preceded the controversy.” *Stemple v. Bd. of Ed. of Prince George's Cnty.*, 623 F.2d 893, 898 (4th Cir. 1980). Courts have found it necessary, in some cases, to require a party who has disturbed the status quo to reverse its actions, thereby restoring the status quo ante. See also *Lewis v. Federal Prison Industries, Inc.*, 953 F.2d 1277, 1286 (11th Cir. 1992); *Does v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251 (10th Cir. 2024); *Austin v. Univ.*

of Fla. Bd. of Trs., 580 F. Supp. 3d 1137 (N.D. Fla. 2000); *Overstreet v. El Paso Disposal, LP*, 625 F.3d 844 (5th Cir. 2010).

B. Standard for Relief and Application to Petitioner Equities

Mandatory injunctive relief restoring the status quo ante is warranted in “rare instances” where the movant demonstrates a clear or substantial likelihood of success on the merits and irreparable harm that cannot be remedied by monetary damages. See *Johnson v. Interstate Power Co.*, 187 F. Supp. 36 (D.S.D. 1960); *Harris v. Wilters*, 596 F.2d 678, 680 (5th Cir. 1979); *Exhibitors Poster Exch. v. National Screen Serv. Corp.*, 441 F.2d 560 (5th Cir. 1971).

In the present case, Petitioner’s unlawful detention constitutes ongoing, irreparable harm. Each additional day of confinement compounds the deprivation of liberty, separation from family, and inability to work—harms that cannot be remedied by monetary damages or a final judgment. The equities overwhelmingly favor Petitioner, as Respondents will suffer little inconvenience by being required to comply with the law and their own regulations. The only “harm” to Respondents is the inability to continue unlawful detention. Should circumstances change, Respondents retain the ability to re-detain Petitioner if they can demonstrate by clear and convincing evidence that Petitioner is a flight risk or danger to the community.

C. Policy Considerations, Equities and Conclusion

Restoring the status quo ante serves the public interest by upholding constitutional and statutory rights, ensuring due process, and compelling government agencies to adhere to established rules and procedures. Arbitrary detention undermines public trust in government and the rule of law. The relief sought here is narrowly tailored to prevent ongoing harm and does not impede the government's ability to enforce immigration laws in compliance with existing legal standards.

The legal authorities and equities presented herein establish that restoration of the status quo ante is not only within the Court's power, but is the only adequate remedy under the circumstances. Petitioner respectfully requests that the Court issue a mandatory injunction restoring her to the position she occupied prior to her unlawful detention, thereby preventing further irreparable harm and preserving the integrity of the judicial process.

V. PROCEDURAL REQUIREMENTS

Because Petitioner seeks only as-applied, individual relief against government actors and does not seek monetary damages, the risk to Respondents is minimal and public interest litigation supports waiver or nominal security.

Security: The Court should waive the Rule 65(c) security requirement or set a nominal bond, as this case vindicates important constitutional rights, seeks as-applied relief against the government, and Respondents face no risk

of monetary harm from compliance with constitutional and statutory obligations. Courts in the Fifth Circuit have frequently exercised their discretion to require no bond in cases involving the enforcement of constitutional rights or where the Respondent would not be harmed by the injunction. The Eleventh Circuit aligns itself with the “judicial discretion” standard, which is more flexible and allows for consideration of factors such as the public interest and the absence of risk of monetary harm to the enjoined party. *State of Ala. ex rel. Siegelman v. U.S. E.P.A.*, 925 F.2d 385 (11th Cir. 1991). Furthermore, Petitioner is not a wealthy noncitizen and lacks financial means to pay a TRO bond.

Here, Petitioner seeks only as-applied, non-monetary relief against government actors; and Respondents face no risk of financial loss or damages from compliance with constitutional and statutory obligations. The equities and public interest strongly support waiver or a nominal bond, as the relief sought is to prevent ongoing unlawful detention and does not expose Respondents to monetary harm.

Additionally, where an action is brought for the enforcement of “public interests” which “are of such gravity and importance as to warrant their enforcement without the usual safeguards for the opposing party,” the court may dispense with the bond requirement. Respondents cannot show that they will suffer any monetary damages, and the public interest in having agencies

follow the law and their own regulations and procedures as well as protect constitutional rights does not warrant any security payment in this case.

VI. CONCLUSION

All factors to be considered in determining whether to issue the requested TRO and/or preliminary injunction each point in favor of granting Petitioner's request. But even if the Court disagrees, Petitioner's motion should be granted if an overall balancing of the four factors tips in Petitioner's favor and Petitioner has shown a "clear and substantial likelihood of success on the merits." There is no reversing time, and so, no way to remedy the permanent loss Petitioner will imminently suffer absent Court action. Consistent with 8 U.S.C. § 1252(f)(1), Petitioner seeks only as-applied, individual injunctive relief; no class-wide or programmatic injunction is requested.

For the above stated reasons, Petitioner respectfully submits that she has met the criteria for a temporary restraining order. Pursuant to which, Petitioner asks the Court to issue grant her the order enumerated in the attached motion.

Respectfully submitted this 13th, November, 2025.

Karen Weinstock

Karen Weinstock

Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com