

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

MIGUEL HERNANDEZ,)
)
Petitioner,)
)
vs.)
)
DENNIS UDZINSKI, *in his official capacity as*)
Warden of Hall County Jail; and)
LADEON FRANCIS, *ICE Atlanta*)
Field Office Director; and)
TODD LYONS, *in his official capacity as Acting*)
Director of Immigration and Customs)
Enforcement; and)
KRISTI NOEM, *Secretary of Homeland Security*)
And PAMELA BONDI, *U.S. Attorney General.*)
)
Respondents.)
_____)

CASE NO.:

MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTIVE RELIEF
AND REQUEST FOR AN IMMEDIATE HEARING

COMES NOW Petitioner, Miguel Hernandez (Petitioner) and pursuant to Federal Rule of Civil Procedure 65 and Local Rule 65.1, hereby files this Motion for Temporary Restraining Order and Preliminary Injunctive Relief against Respondents, and states as follows in support thereof:

Petitioner hereby incorporates all contents of the Writ of Habeas Complaint, ECF 1, into this motion.

I. INTRODUCTION AND GROUNDS FOR EX PARTE RELIEF

Petitioner seeks a TRO on an **ex parte** basis because immediate and irreparable injury will occur before Respondents can be heard in opposition. Specifically, Petitioner will be imminently transferred from the Hall County Jail to another detention center as ICE does not have detention facilities for immigrants beyond 72 hours in the Northern District of Georgia (this information was obtained from a Declaration of ICE Officer submitted in another case of undersigned counsel). Once transferred, Petitioner will be outside the immediate jurisdiction of this Court, and the government will be able to move him further or quickly effectuate removal, thereby frustrating this Court's ability to grant effective relief on the pending habeas petition. The risk of irreparable harm is not speculative: the loss of liberty, separation from U.S. citizen children, and the potential for removal or transfer to a remote facility are injuries that cannot be remedied by money damages or subsequent proceedings.

Federal Rule of Civil Procedure 65(b)(1) authorizes the Court to issue a TRO without notice to the adverse party only if:

1. It clearly appears from specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

2. The movant's attorney certifies in writing any efforts made to give notice and the reasons why notice should not be required.

Here, Petitioner's counsel certifies that, due to the imminent transfer and the risk that Respondents could move Petitioner outside this Court's jurisdiction or effectuate removal before a hearing can be held, notice is not feasible without risking the very harm the TRO is intended to prevent. Courts have repeatedly recognized that ex parte TROs are appropriate where, as here, notice would enable the government to take irreversible action before the court can intervene, thus defeating the purpose of the requested relief. See *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 438-39 (1974).

Petitioner faces not only the loss of liberty, but also the risk of being moved to a location where access to counsel, family, and the court is severely restricted, or of being removed from the United States altogether. These are precisely the types of irreparable injuries that justify ex parte relief under Rule 65(b).

II. FACTUAL AND LEGAL BASIS FOR RELIEF

Petitioner is a long-term resident of the United States, married with two U.S. citizen children, and has established deep family and community ties. He is currently detained solely because ICE/DHS and EOIR have classified him as an "arriving alien" under 8 U.S.C. § 1225, despite his apprehension in the interior of the United States nearly two decades after entry. This classification

is inconsistent with the plain language of the INA, Supreme Court precedent (*Jennings v. Rodriguez*, 583 U.S. 281 (2018)), and due process principles.

Petitioner's continued detention is not supported by any finding of flight risk or danger to the community. The government's actions violate agency regulations, the INA, and the Constitution. Petitioner's transfer or removal would cause irreparable harm, including loss of liberty, family separation, and the inability to pursue his claims in this Court.

III. NECESSITY OF EX PARTE RELIEF

Ex parte relief is necessary and just in this case because:

- Petitioner is scheduled for imminent transfer and notice to Respondents would likely result in his removal from this Court's jurisdiction before the Court can act. Petitioner is scheduled to depart from Hall County to another detention center most likely Monday, November 17, 2025 or Tuesday November 18, 2025 at the latest. Since this Writ of Habeas is filed the night between Saturday and Sunday (November 16, 2025), this case may not be opened by the clerk's office until later on Monday or Tuesday. Undersigned counsel was informed in other cases that absent a court issued TRO, ICE will be moving clients away from the jurisdiction.
- The harm—loss of liberty, family separation, and potential removal—is immediate and irreparable.

- There is no adequate remedy at law; once Petitioner is transferred or removed, the Court's ability to grant effective relief will be irretrievably lost.
- The balance of equities and the public interest favor immediate intervention to preserve the status quo and prevent irreparable harm, especially where the government's actions are alleged to be unlawful and contrary to due process.

Petitioner's counsel certifies that, under these circumstances, notice should not be required because it would itself precipitate the very harm the TRO is intended to prevent.

Petitioner entered the United States without inspection through the southern border almost 20 years ago. Since then, he has established strong family, community, and economic ties having lived in the country for so long. He has been married and has two U.S. citizen children. ECF 1. He is detained and ineligible for a bond before ICE or the Immigration Judge, due to the current position being held by both ICE/DHS and EOIR that since Petitioner entered the U.S. without inspection, he is an "arriving alien" or "seeking admission" and therefore his detention is governed by 8 U.S.C. § 1225. See generally Complaint, ECF 1, attached exhibits and EOIR decision *Matter of Yajure Hurtado*.

Although Petitioner was apprehended within the interior of the United States, many years after the initial entry, immigration authorities have classified Petitioner as ineligible for release on bond as an “arriving alien” or “applicant for admission” solely because of Petitioner’s alleged entry without inspection almost two decades ago. This classification is inconsistent with the plain language of the Immigration and Nationality Act (INA). It also contradicts the Supreme Court interpretation in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), is contrary to due process principles and established agency policy as specified in the Complaint. Petitioner’s long-term residence, family ties, and lack of significant criminal history demonstrate that he poses neither a flight risk nor a danger to the community. These actions to detain Petitioner or continue his detention constitute a violation of agency regulations and constitutional due process, rendering his detention unlawful.

Specifically, on November 15, 2025, Petitioner was arrested by Gainesville police following a car accident. He was transferred to Hall County jail where he has remained detained despite his son paying the bond to release him the evening of November 15, 2025. His continued custody lacks a lawful basis, exceeds the scope of ICE’s statutory authority, and undermines fundamental protections guaranteed by the Fifth Amendment to the United States Constitution. Under these circumstances, Petitioner filed a habeas corpus petition in this Court. As explained in detail in the attached Brief in

Support, Petitioner is, by this motion, seeking a temporary restraining order and preliminary injunction on an ex parte basis, to prevent ICE and its contracted officials to remove Petitioner to a geographic location outside this Court's jurisdiction, to release Petitioner from custody unless the government can prove, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community, and to enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1225, until Petitioner's habeas corpus petition is fully resolved and the declaratory relief becomes permanent.

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 Petitioner 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 this continued unlawful detention and if continued could lead to irreversible health impacts.

Petitioner filed this underlying Writ of Habeas action on November 16, 2025. *See* ECF 1. The sole reason that Petitioner is currently detained and ineligible for a bond before ICE or the Immigration Judge is ICE/DHS's and the Executive Office for Immigration Review's (EOIR) position that because Petitioner entered Petitioner the United States without inspection, Petitioner

is an “arriving alien” or “seeking admission” and therefore Petitioner’s detention is governed by 8 U.S.C. § 1225. See generally Complaint, ECF 1 and accompanying exhibits and EOIR decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Although Petitioner was apprehended within the interior of the United States, many years (approximately 30) after Petitioner’s initial entry, immigration authorities have classified Petitioner as ineligible for release on bond solely because of Petitioner’s alleged entry without inspection more than a decade ago. This classification is inconsistent with due process principles and established agency policy, as Petitioner’s long-term residence, family ties, and lack of criminal convictions demonstrate that he poses neither a flight risk nor a danger to the community.

As a result, Petitioner remains unjustly confined at the Hall County Jail, within the Northern District of Georgia, under conditions amounting to unlawful civil detention, alongside criminals. His continued custody lacks a lawful basis; exceeds the scope of ICE’s statutory authority; and undermines fundamental protections guaranteed by the Fifth Amendment to the United States Constitution. Because no administrative remedy exists to ensure ICE/DHS releases Petitioner, judicial intervention is necessary at this time to prevent irreparable harm. 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. This principle applies regardless of whether the operative complaint has changed, so long as the underlying harm and the need for urgent relief persist.

**THE COURT HAS INDEPENDENT JUDGEMENT AUTHORITY TO
INTERPRET THE STATUTE**

The *Chevron* deference is inapplicable to the agency's interpretation of § U.S.C. §§ 1225 and 1226 in this case. The Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo*, expressly overruled the "*Chevron deference*"¹, holding that **courts are not required to defer to agency**

¹ *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), overruled.

interpretations of ambiguous statutes. 603 U.S. 369 (2024). Instead, federal courts must exercise their **independent judgment** to determine the best reading of the statute, giving due respect to the views of the executive but not yielding interpretive authority. Therefore, this Court is now mandated to interpret the plain language of 8 U.S.C. §§ 1225 and 1226 independently, without any presumption of deference to the agency's regulatory interpretation as erroneously interpreted in *Yajure Hurtado*. As mentioned above, there are many district court authorities from around the country that rejected the agency's interpretation and position in this matter.

Futility of Bond Request

As set forth in the Complaint, exhaustion of administrative remedies is neither necessary nor required before initiating a writ of habeas corpus to challenge an unlawful arrest. Should Respondents contend that Petitioner was obligated to seek a bond hearing before the immigration judge, such a step is both unnecessary and would be futile under the circumstances. The futility of pursuing a bond request, as well as the legal authorities confirming that exhaustion is not required, are demonstrated in the Complaint and its exhibits. See Attorney Declaration Exhibit to Complaint.

This Court Has Jurisdiction to Grant Relief

This Court has jurisdiction, under the All Writs Act and its inherent equitable powers to provide relief, to issue the relief requested in this TRO,

including to prevent DHS from moving Petitioner outside the NDGA district, order his immediate release and order Respondents to Show Cause why the Writ of Habeas should not be granted within 3 days. 8 U.S.C. § 2243. Judge Cohen in a case with similar issues discussed herein, 1:25-cv-06080-MHC *Rojano Gonzalez v. Sterling*, granted relief to Petitioner. See ECF Dkt. 18 in that case.

This Court has jurisdiction to enjoin Petitioner's removal from the United States unless and until the Immigration Judge orders removal, because 8 U.S.C. § 1252(g) "strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful** discretion to **commence** removal proceedings, **adjudicate** those cases, and **execute** orders of removal." *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025). As the Fourth Circuit has explained, "§ 1252(g) does not apply to agency interpretations of statutes as these decisions do not fall into any of the three categories enumerated in § 1252(g)."

Section 1252(g)'s bar on jurisdiction is narrow and only includes those three actions (commence removal proceedings, adjudicate cases, execute orders of removal). It does not preclude jurisdiction over the challenges to legality or constitutionality of a noncitizen's detention, that is specifically permitted in the habeas statute. Detention of a noncitizen is a separate issue than removal proceedings. The Supreme Court has read the language "any cause of action or

claim by or on behalf of any alien *arising from* the decision or action by the Attorney General to **commence proceedings, adjudicate cases, or execute removal orders** against any alien under this chapter” to only refer to those three actions themselves. *Jennings*, 583 U.S. at 294 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-483 (1999)) (“We did not interpret this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General”). In *Reno v. Am.-Arab Anti-Discrimination Comm.*, the Supreme Court clarified that § 1252(g) is not a “‘zipper’ clause” that prevents judicial review of all actions related to deportation proceedings. 525 U.S. 471, 482 (1999). Instead, “[t]he provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’ There are of course many other decisions or actions that may be part of the deportation process” *Id.* at 482 (quoting 8 U.S.C. § 1252(g)). The Court observed that Congress enacted § 1252(g) to protect the executive’s discretionary actions. *Id.* at 483–85.

Finally, section 1252 only limits the Court’s authority to issue injunctive relief on (1) “the operation of the provisions of part IV of this subchapter . . . *other than with respect to the application of such provisions to an individual alien against whom proceedings under such have been initiated*” and (2) “the removal of any alien *pursuant to a final order* . . .

[without] clear and convincing evidence that the entry of execution of such order is prohibited as a matter of law.” 8 U.S.C. § 1252(f)(1)-(2).

Other than certain criminal aliens subject to detention based on 8 U.S.C. § 1226(c) and noncitizens with final removal orders (neither situation is the case with Petitioner), detention is separate and distinct from removal proceedings. Because immigration detention is **civil** in nature (and not criminal), it cannot be punitive and **can only serve two legitimate purposes: to prevent flight prior to removal and to prevent danger to the community**. Petitioner’s detention is unsupported by either purpose.

Petitioner is not disputing the government’s ability to initiate removal proceedings against Petitioner, adjudicate Petitioner’s removal case or execute an order of removal (to which Petitioner is not yet subject as Petitioner will seek relief from removal). However, Petitioner is disputing the government’s ability to **detain** Petitioner throughout the entire process without bond, pursuant to the ICE July 2025 memo and the Board of Immigration Appeals’ *Matter of Yajure Hurtado*, which are unlawful and unconstitutional and unsupported by the plain language of the Immigration and Nationality Act. What petitioner is seeking, review of the federal statute governing Petitioner’s detention and dispute over Petitioner’s unlawful detention is specifically permitted in the Habeas statute (§2241) to challenge the lawfulness of this detention.

The habeas statute at 8 U.S.C. § 2243 outlines the procedure for handling petitions for writs of habeas corpus. It mandates that the court must either grant the petition or issue an order to show cause “forthwith,” unless the Petitioner is not entitled to relief. If an order to show cause is issued, the **Respondents are required to file a return within three days.**

Conclusion and Prayer for Relief

Immediate injunctive relief is essential because Petitioner has a substantial likelihood of success on the merits of the complaint; Petitioner will suffer irreparable harm in the absence of injunctive relief; there is no adequate remedy available at law; the balance of hardships favor Petitioner, 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. These harms include the loss of liberty itself, which gives rise to a Due Process claim, and injury to Petitioner’s fundamental interest in family unity. This loss will cause tremendous hardship to Petitioner and his family which includes two U.S. citizen children 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, Petitioner respectfully requests that the Court enter a temporary restraining order, and requests leave to present oral argument in support of the entry of preliminary injunctive relief following notice thereof to all parties as follows:

- (1) Order Respondents to return Show Cause within 3 days;
- (2) Schedule a hearing on this TRO or PI for as soon as possible;
- (3) Restrain Respondents from moving Petitioner from outside this Court's jurisdiction in order to prevent ouster of this Court's review of the pending Writ of Habeas Petition;
- (4) Order Petitioner's immediate release from custody and enjoining Respondents from re-detaining him under 8 U.S.C. § 1225 during the pendency of these proceedings;
- (5) Alternatively, order release followed by a bond hearing in this Court within 3 days thereafter where the **government** bears the burden to prove, by clear and convincing evidence, that the Petitioner is a flight risk or a danger to the community;
- (6) Enjoin Respondents, absent change of circumstances, from re-detaining Petitioner or modifying Petitioner's terms of release without prior notice and Court's permission;

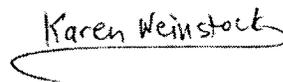
- (7) Order that prior to any re-detention of Petitioner, Respondents must prove, by clear and convincing evidence, that he is a flight risk or danger to the community;
- (8) Award Petitioner attorney's fees and costs; and
- (9) Grant Petitioner any additional relief proper and just under the circumstances.

Undersigned counsel further requests that if any hearing is scheduled, she be permitted to appear telephonically or through video conferencing as she has a heavy workload in many courts around the country and travel is very difficult on short notice with so many court appearances, TRO's and other hearings scheduled in the immediate future. She does not object to video or telephonic appearance by government counsel. A supplemental memorandum of authorities is being filed herewith.

Respectfully submitted this 16th Day of November, 2025

Certification of Counsel:

Pursuant to Rule 65(b)(1)(B), undersigned counsel certifies that, due to the imminent and unannounced transfer of Petitioner, and the risk of removal or transfer outside this Court's jurisdiction, notice to Respondents is not feasible and would likely result in irreparable harm before the Court can act.



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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
Pro Hac Vice Filed Herewith
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CERTIFICATE OF SERVICE

I certify that on November 16, 2025, I electronically filed the foregoing PETITIONER'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

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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 his 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 Hall County jail, 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).

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).

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.

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 Petitioner’s 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 Petitioner. The rare magnitude of the harm that Petitioner and Petitioner’s 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 Petitioner 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 Petitioner’s claims because Petitioner’s continued detention due to an ultra vires agency action and in violation of Petitioner’s Due Process rights under the U.S. Constitution violates both the law and the Constitution. Petitioner will suffer irreparable harm if ICE continues to unlawfully detain Petitioner. Any of these actions (or all)—given Petitioner’s precarious conditions of detention and inability to participate in pursuing relief from removal due to detention and risk of removal from this country without due process—will result in irreparable harm to Petitioner. Last, the balance of equities and public interest weigh in Petitioner’s favor because Petitioner has presented significant equities that outweigh those of Respondents and because the public has a strong interest in having the government follow the law and the U.S. Constitution.

A. Petitioner is Likely to Succeed on the Merits of his Claim.

Petitioner is likely to succeed for at least five independent reasons:

(1) Ultra Vires Agency Action.

As courts have recognized, “Agency actions beyond delegated authority are ‘ultra vires,’ and courts must invalidate them.” *U.S. ex rel. O’Keefe v.*

McDonnell Douglas Corp., 132 F.3d 1252, 1257 (8th Cir. 1998); *see also* *Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid). The ICE July 2025 memo is ultra vires as it contradicts the plain language of the Immigration and Nationality Act (INA). Likewise, *Matter of Yajure Hurtado* is also ultra vires for the same reason. *See* ECF 1, Complaint, and authorities quoted therein. Dozens of cases from district courts nationwide bolster the Petitioner's argument that these agency interpretations exceed their legal authority and lack support under the INA (ECF 1-2). 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 also* 2 additional authorities from other courts within the 11th Circuit: 1:25-cv-06080-MHC *Rojano Gonzalez v. Sterling, J.A.M. v. Streeval, et. al.*, No. 4:25-cv-342 (CDL), 2025 WL 3050094 (MDGA Nov. 1, 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).

(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.

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.

(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.¹

Dozens of 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.

¹ 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).

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 family, Petitioner’s wife and two U.S. citizen children, interruption of Petitioner’s life and 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 his family. Petitioner is a law abiding noncitizen who seeks liberty and justice, under the laws of the United States, yet 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 (and distinction between Petitioner and an “arriving alien”). By contrast, each additional day of civil confinement inflicts grave, irreparable harm to Petitioner’s liberty; separates Petitioner from family 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 a 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 his 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 his 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 Petitioner has been living in liberty for the past 20 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 his claim that his detention is unconstitutional, in addition to his claim that the agency actions are ultra vires and violate the *Accardi* doctrine.

IV. COURT'S AUTHORITY TO RESTORE THE STATUS QUO

“(I)t has long been established 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). Equity will, at times, restore the status quo ante pending the ultimate resolution of the controversy, even before the Defendant has an opportunity to file a responsive pleading to a claim asserted by the Plaintiff. *In re Lennon*, 166 U.S. 548 (1897).

This Court can also be requested, and authorized, to issue a mandatory injunctions compelling Respondents to take **affirmative** action, rather than restricting them from altering the status quo, 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) (“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); *Bastian v. Lakefront Realty Corp.*, 581 F.2d 685, 691 (7th Cir. 1978); *Bowles v. Skaggs*, 151 F.2d 817 (6th Cir. 1945); Although a TRO or injunction that orders Defendants “to take affirmative action is proper only in “rare instances” (*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)), due to concern over giving a party the full relief it seeks prior to adjudication on the merits, ordering affirmative action by Defendants is proper in this instance.

Courts have granted injunctions to restore parties to the **status quo ante** in a variety of contexts, often where irreparable harm is demonstrated and the equities favor such relief. The “status quo ante” refers to the position the parties occupied **before the alleged wrongful act or dispute**. The following cases illustrate judicial approaches to granting such injunctions, with particular attention to the reasoning and circumstances under which restoration to the status quo ante was ordered, which is merited in this case as Petitioner has been unlawfully detained. The Eleventh Circuit has affirmed orders enjoining parties from making unilateral changes and restoring conditions that existed before such changes, effectively granting an affirmative injunction to restore the status quo ante. In *Reynolds v. Roberts*, the Eleventh Circuit vacated a district court’s preliminary injunction and instructed the lower court to restore the case to the status quo ante, meaning that nothing had happened in the case since a specific date when an order and injunction had been entered. The appellate court’s directive to “restore the case to the status quo ante” demonstrates the use of injunctive relief to return the parties to their positions prior to the disputed judicial action, effectively nullifying subsequent proceedings and preserving the original state of affairs. *Reynolds*

v. Roberts, 207 F.3d 1288 (11th Cir. 2000). See also *International Ass'n of Machinists and Aerospace Workers v. Transportes Aereos Mercantiles Pan Americanos, S.A.*, 924 F.2d 1005 (11th Cir. 1991), 1011. The rationale for maintaining the status quo is to prevent self-help measures before the exhaustion of statutory procedures, which could undermine a party's position and lead to interruptions. *Id.*, 1008. The Court found that unilateral changes undermined the union's bargaining position and ability to negotiate fairly, and no other remedy would be effective.²

Hence, the district court is entitled to apply the hollow-formality test to restore the status quo prior to Petitioner's arrest and order Respondents to release Petitioner immediately. Petitioner's case involves the rare circumstance in which Petitioner, and Petitioner's family will suffer severe, irreparable, and permanent injury in the absence of court-mandated agency

² In addition to the U.S. Supreme Court and the Eleventh Circuit Court of Appeals, other sister circuits have similarly stated that: **"A preliminary injunction can also act to restore, rather than merely preserve, the status quo, even when the nonmoving party has disturbed it."** *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012). See also *Bastian v. Lakefront Realty Corp.*, 581 F.2d 685, 691 (7th Cir. 1978). The status quo to be preserved by a preliminary injunction, however, **is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the "last uncontested status between the parties which preceded the controversy."** See *Stemple v. Bd. of Ed. of Prince George's Cnty.*, 623 F.2d 893, 898 (4th Cir.1980). "To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions," but as the Tenth Circuit has explained, "[s]uch an injunction **restores, rather than disturbs**, the status quo ante." *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1013 (10th Cir.2004); see *United Steelworkers of Am., AFL-CIO v. Textron, Inc.*, 836 F.2d 6, 10, (1st Cir.1987) (determining that injunction requiring insurance premium payments was not "mandatory" but "prohibitory" because during "last uncontested status" defendant had paid premiums). See also *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).

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. The only “harm” to Respondents is that they would not be able to immediately remove Petitioner or continue to detain Petitioner unlawfully. This negates any concern about giving Petitioner the full relief Petitioner is seeks prior to a hearing on the merits. The rare magnitude of the harm that Petitioner and Petitioner’s 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. Respondents can always re-detain Petitioner if Petitioner commits certain criminal offenses or if the government can prove by clear and convincing evidence that Petitioner is a flight risk or a danger to the community and pursue other alternatives to detention which is very costly. So the risk and the inconvenience to the government is minimal.³

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.

³ The Court can avoid this concern altogether by consolidating the preliminary injunction hearing with a trial on the merits, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure.

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 Eleventh 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

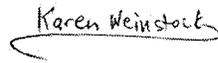
enforcement without the usual safeguards for the opposing party,” the court may dispense with the bond requirement. Respondents cannot show that they will suffer any monetary damages, and the public interest in having agencies follow the law and their own regulations and procedures as well as protect 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. 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 § 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 the following order during the pendency of the instant legal action: Petitioner pleads that the Court urgently issue a TRO or preliminary injunction as outlined in the interfiled motion for TRO.

Respectfully submitted this 16th Day of November, 2025



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