

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

NERY VIDAL REMIREZ ZAPET;)
DONALD ESTUARDO BRAVO CABRERA)

Petitioners,)

vs.)

LADÉON 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.:

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

COME NOW Petitioners, Nery Vidal Ramirez Zapat and Donald Estuardo Bravo Cabrera and file this Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction. Petitioners hereby request 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)).

Petitioners were detained on a public roadway without prior notice, probable cause, or any meaningful opportunity to be heard, in clear violation of governing agency procedures. They were subsequently transported to 180 Ted Turner Drive, SW, Atlanta, Georgia, where they remain in custody since December 8, 2025. Their apprehension stems from an unlawful arrest and lacks any legitimate legal basis, constituting a violation of both procedural and substantive due process, as no probable cause existed for the arrest. Subsequently, no findings were made regarding risk, his long-standing ties to the community, or any purported danger they might pose.

Petitioners face ongoing harms due to the unlawful nature of their detention. Because no administrative remedy exists, judicial intervention is necessary at this time to prevent irreparable harm.

Through the instant Motion, Petitioners seek to restrain U.S. Immigration and Customs Enforcement (ICE) from continuing to unlawfully detain them and to preserve the status quo while this Court considers the merits of their Writ of Habeas Corpus.

In addition, there is no remedy at law that can adequately compensate Petitioners for the consequences of their continued unlawful detention,

including deterioration of their mental and physical health, separation from their family. Each day of confinement causes irreparable harm, deprives them of liberty in violation of the Constitution, and frustrates the statutory scheme.

“The writ, or order to show cause . . . shall be returned within three days” ... § 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 Petitioners contrary to law and the U.S. Constitution, causing significant hardship. Petitioners’ 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 Petitioners for the consequences of their continued unlawful detention and if continued could lead to irreversible impacts.

Immediate injunctive relief is essential because Petitioners have a substantial likelihood of success on the merits of the complaint; Petitioners will suffer irreparable harm in the absence of injunctive relief; there is no adequate remedy available at law; the balance of hardships favor Petitioners, and the requested injunctive relief will not harm the public interest. The facts and legal arguments supporting this motion are set forth in detail Petitioners’ Memorandum of Authorities in Support of Emergency Motion for Temporary

Restraining Order and/or Preliminary Injunction filed contemporaneously herewith.

Should Respondents' unlawful detention continue, Petitioners will remain confined in violation of the laws of the United States and the Constitution. 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 Petitioners and their families and frustrate the statutory scheme. 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. Order Respondents to Show Cause why this Writ should not be granted within 3 days pursuant to §2243;
2. Order Respondents to immediately release Petitioners;
3. Schedule an evidentiary hearing on the matter in order to hear testimony from Petitioners regarding the circumstances leading to their arrest;
4. ENJOIN Respondents from re-detaining Petitioners unless they have

committed a new violation of any federal, state, or local law, or have failed to attend any properly noticed immigration or court hearing or are subject to detention pursuant to a final order of removal;

5. Grant such other and further relief as the Court deems just and proper.
6. Should the court have questions, we hereby request an expedited emergency hearing to be scheduled (telephonically or virtually if possible).

Respectfully submitted this 12th Day of December, 2025

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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
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CERTIFICATE OF SERVICE

I certify that on December 12^h, 2025, I electronically filed the foregoing DOCUMENT 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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Respondents.)

CASE NO.:

MEMORANDUM OF AUTHORITIES
IN SUPPORT OF PETITIONERS' EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY
INJUNCTION

I. INTRODUCTION AND PROCEDURAL HISTORY

By and through their Counsel, Petitioner files this Memorandum of Authorities in Support of Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction. Petitioners are detained at the ICE offices at 180 Ted Turner Drive SW, Atlanta, Georgia, 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 Petitioners.

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 Petitioners'.

Petitioners recognize 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 they seek.

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, Petitioners' case involves the rare circumstance in which Petitioner and their 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 them. The rare magnitude of the harm that Petitioner and their families 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.

Burden of Proof

The vast majority of U.S. Circuit Courts of Appeals and U.S. District Courts around the country have found that the *government* bears the burden of proof under § 1226(a) whether detention is justified. Noncitizens detained under § 1226(a) are "entitled to release on bond unless the government establishes that he is a flight risk or will be a danger to the community." *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 951 (9th Cir. 2008) (internal quotation marks and citation omitted); see also *Singh v. Holder*, 638 F.3d 1196,

1203 (9th Cir. 2011) (“[T]he burden of establishing whether detention is justified falls on the government.”); *see also Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020); *see also Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021) (indicating that the *government* bears the burden to prove a noncitizen is a danger to the community or flight risk in order for an immigration judge to deny bond).

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, Petitioners meet all 4 *Winter* criteria and merits the grant of a Temporary Restraining Order and/or Preliminary Injunction. Petitioners are likely to succeed on the merits of their claims because their continued detention due to an ultra vires agency action and in violation of their 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 them. Any of these actions (or all)—given them precarious

conditions of their detention and inability to participate in pursuing relief from removal due to detention—will result in irreparable harm to Petitioners. Last, the balance of equities and public interest weigh in Petitioners’ favor because they have 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. Petitioners Are Likely to Succeed on the Merits of their Claims.

Petitioners have a substantial likelihood of success on the merits because their detention is based on an unlawful agency policy that has been widely rejected by federal district courts, including in this Circuit.¹ The government’s action is invalid for multiple, independent reasons.

(1) ICE’s Detention Policy is Unlawful Under the INA, APA, and *Accardi* Doctrine.

Respondents’ detention of Petitioners stems from a new policy, articulated in the ICE July 2025 memo and *Matter of Yajure Hurtado*, that reclassifies noncitizens apprehended in the interior as “arriving aliens” subject to mandatory detention under 8 U.S.C. § 1225(b). This policy is unlawful on several grounds.

¹ See, e.g., *Rojano Gonzalez v. Sterling*, No. 1:25-CV-6080-MHC, 2025 WL 3145764, at *6 (N.D. Ga. Nov. 3, 2025) (Noncitizens who are just “present” in the country, who have been here for years upon years, are not “seeking” admission); *Jimenez v. Warden*, No. 1:25-cv-05650-SDG (N.D. Ga. Nov. 6, 2025) (Doc. 24); *Lima v. Warden*, No. 1:25-CV-6304-ELR (N.D. Ga. Nov. 18, 2025); *J.A.M. v. Streeval*, No. 4:25-cv-342, 2025 WL 3050094 at *5 (M.D. Ga. Nov. 1, 2025)).

First, the policy is an *ultra vires* agency action because it directly contradicts the plain language of the Immigration and Nationality Act (INA), which provides for discretionary bond hearings under 8 U.S.C. § 1226(a) for individuals in Petitioners' circumstances. An agency action that exceeds its delegated statutory authority is invalid. See *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998).

Second, by ignoring the statutory scheme and failing to provide a reasoned basis for this major policy shift, the agency's action is arbitrary and capricious in violation of the Administrative Procedure Act (APA).

Finally, the policy violates the long-standing principle from *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), which mandates that agencies follow their own regulations and procedures. By unilaterally nullifying the established discretionary bond framework of § 1226(a), Respondents have disregarded the procedural safeguards intended to protect individual liberty, rendering their action invalid.

(2) Petitioners' Detention Violates the Due Process Clause.

Independently, Petitioners' continued detention without a bond hearing violates their substantive and procedural due process rights under the Fifth Amendment. The government's authority to detain is not limitless and must serve a legitimate purpose, such as preventing flight or danger. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 584 U.S. 281 (2018). By

subjecting Petitioners to mandatory detention based on an unlawful legal interpretation—and without any individualized finding of risk—Respondents have deprived them of their fundamental right to liberty without due process of law.

B. Petitioners Are 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 Petitioners' life and, as applicable, his 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).

Petitioners 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 Petitioners' unlawful detention, **deprivation of liberty** and **separation** from her family which includes two 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.

Petitioners are 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 Petitioners 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 Petitioners' favor because the harm to the Petitioners from continued unlawful detention outweighs any potential harm to the government. Petitioners has stable employment, family, and community ties and no new adverse factors. Enjoining Respondents from unilaterally, illegally, and unconstitutionally detaining Petitioners under § U.S.C. § 1225(b)(2) simply preserves the status quo ante of Petitioners release and liberty prior to Petitioners' unlawful detention does not hinder ICE's ability to present evidence to this Court that Petitioners 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 Petitioners' 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.

By contrast, each additional day of civil confinement inflicts grave, irreparable harm to Petitioners' liberty; separates them from their families 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. Petitioners' 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, Petitioners’ liberty interest is paramount; the risk of erroneous deprivation is extreme—considering the prior determination by the same agency that Petitioners are 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 Petitioners' circumstances. The risk of deprivation is high because ICE is violating the agency's own rules, regulations, and the INA under which it operates. Petitioners' right to liberty and to be free from unjustified detention is paramount. In conclusion, all three *Mathews* factors favor Petitioners' position that their 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 they have been living in liberty for the past several years in the United States and this liberty has not been taken away, it deprives the Petitioners of a meaningful remedy, as the judicial order is rendered ineffective by administrative fiat. Petitioners were not afforded a full hearing or notice before any deprivation

occurred. For all these reasons mentioned herein, Petitioners have shown they are likely to succeed on the merits of their claim that their detention is unconstitutional, in addition to their claim that the agency actions are ultra vires and violate the *Accardi* doctrine.

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 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.

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).

Hence, the district court is entitled to apply the hollow-formality test to restore the status quo prior to Petitioners’ arrest and order Respondents to release Petitioners immediately. Petitioners’ case involves the rare circumstance in which Petitioner, and Petitioners’ 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. 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 Petitioners' 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 Petitioners if Petitioners commits certain criminal offenses or if the government can prove by clear and convincing evidence that Petitioners are 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.

IV. PROCEDURAL REQUIREMENTS

Because Petitioners seek only as-applied, individual relief against government actors and do 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, Petitioners are not a wealthy noncitizens and lack 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.

V. CONCLUSION

All factors to be considered in determining whether to issue the requested TRO and/or preliminary injunction each point in favor of granting Petitioners' request. But even if the Court disagrees, Petitioners' motion should be granted if an overall balancing of the four factors tips in Petitioners' favor and Petitioners have 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 Petitioners 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, Petitioners respectfully submits that they have 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 ordering Defendants to release him from detention immediately and enjoining Respondents from re-detaining Petitioner under 8 U.S.C. § 1225 during the pendency of these proceedings, and grant any

additional relief proper and just under the circumstances as outlined in the motion for TRO.

Respectfully submitted this 12th, December, 2025.

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