UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ERNEST JOSEPH, Plaintiff-Petitioner, v. **SCOTTY RHODEN**, **GARRETT J. RIPA**, **TODD LYONS**, **KRISTI NOEM**, and **PAMELA BONDI**, Defendants-Respondents.	Civil No. 3:25-cv-01579-MMH-PDB

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

COMES NOW Plaintiff-Petitioner ERNEST JOSEPH, in accordance with FED R. CIV. P. 65(b), 8 U.S.C. § 705, and Local Rule 6.01, and respectfully moves the Court for entry of a Temporary Restraining Order: (a) enjoining Defendants-Respondents from continuing to detain Plaintiff-Petitioner under 8 U.S.C. § 1231(a); (b) directing Defendant-Respondents to release Plaintiff-Petitioner from immigration detention by 5:00 p.m. EST on December 24, 2025, with prior written notice to undersigned counsel as to date, time, and place of Plaintiff-Petitioner's release; (c) enjoining re-detention of Petitioner-Plaintiff by DHS absent (i) evidence of materially changed circumstances and (ii) sufficient prior written notice to Plaintiff-Petitioner and a constitutionally

adequate individualized opportunity to be heard; (d) enjoining Defendants-Respondents—upon any prospective re-detention in accordance with (c)(i)-(c)(iii) above—from transferring, relocating, or removing Plaintiff-Petitioner outside the jurisdiction of the Middle District of Florida absent either written consent by undersigned counsel for Plaintiff-Petitioner or prior approval by the Court; (e) waiving any bond requirement at FED. R. CIV. P. 65(c); and (f) setting an expedited briefing schedule on preliminary injunctive relief.

FACTS & BACKGROUND

Plaintiff-Petitioner Ernest Joseph is a native and citizen of Haiti, born in Cap-Haïtien, Haiti, on [redacted] *See* Government's Answer to § 2241 Petition (Dkt. No. 15) at p. 1 (filed herewith as Exhibit A).[1] Haiti is consistently listed as Plaintiff-Petitioner's place of birth in DHS records, including his I-217 and Fiche Signaletique du Déporté. *See* Exhibit A at p. 1. Plaintiff-Petitioner's mother is deceased, his father resides in the Miami area, and he has an uncle, Vivens Metelus, who resides in Haiti. *See* Declaration of Abraham De Leon (Dkt. No. 22-1) at pp. 1–2 (filed herewith as Exhibit B).

DHS has repeatedly acknowledged that it does not possess a Haitian birth certificate or other primary Haitian identity documents for Plaintiff-

[1] All references to docket entries refer to *Ernest Joseph v. Attorney General, et al.*, No. 4:11-cv-525 (N.D. Fla.).

Petitioner and has instead relied on biographic information contained in his immigration Alien File. *See* Exhibit B at p. 2.

Pertinent Biographic & Immigration History

Plaintiff-Petitioner entered the United States as a minor, approximately in or around 1990, after being brought by a "guardian" during a period of political violence in Haiti. *See* Petition for Writ of Habeas Corpus (Dkt. No. 1) at pp. 4–5 (filed herewith as Exhibit C). Due to his young age at entry and subsequent abandonment by that guardian, Plaintiff-Petitioner does not know whether lawful immigration papers were ever filed on his behalf. *See* Exhibit C at p. 4. After being abandoned, Plaintiff-Petitioner resided with an adopted family in Florida and has lived the overwhelming majority of his life in the United States. *Id.* at p. 5.

On July 17, 2007, an Immigration Judge ordered Plaintiff-Petitioner removed to Haiti. *See* Exhibit C at p. 3. Plaintiff-Petitioner did not appeal the removal order, rendering it administratively final on that date. *See* Exhibit C at p. 3. DHS took Plaintiff-Petitioner into ICE custody on April 12, 2011. *See* Exhibit A at p. 1.

Beginning in April 2011, DHS attempted to obtain travel documents from the Government of Haiti. *See* Report and Recommendation (Dkt. No. 23) at p. 1 (Feb. 14, 2012) (filed herewith as Exhibit D); *see also* Respondents' Supplemental Response (Dkt. No. 22) at p. 1 (filed herewith as Exhibit E);DHS

submitted an electronic travel document request on April 22, 2011. *See* Exhibit E at p. 1. Despite these efforts, DHS conceded it lacked a Haitian birth certificate or other definitive proof of Haitian citizenship required by Haiti. *See* Exhibit B at p. 2.

In November 2011, DHS transferred Plaintiff-Petitioner to Louisiana in preparation for removal on an ICE charter flight to Haiti. *See* Petitioner's Reply (Dkt. No. 20) at pp. 3–4 (Jan. 4, 2012) (filed herewith as Exhibit F). Haitian authorities refused to accept Plaintiff-Petitioner and directed DHS to remove him from the flight because Haiti did not recognize him as a citizen. *See* Exhibit F at p. 4. Plaintiff-Petitioner was returned to ICE custody in Florida following the failed removal. *See* Exhibit F at pp. 3–4.

On December 9–10, 2011, Plaintiff-Petitioner was interviewed by representatives of the Government of Haiti at the Baker County Jail. *See* Order Directing Supplemental Response (Dkt. No. 21) at pp. 3–4 (Jan. 10, 2012) (filed herewith as Exhibit G). Haitian officials stated only that they were "willing to consider" Plaintiff-Petitioner for removal. *See* Exhibit B at p. 1. No travel documents were issued in the months following that interview (and none have been issued to date). *See* Exhibit D at pp. 8–9.

Prior Habeas Petition

On October 13, 2011, Plaintiff-Petitioner filed a petition for writ of habeas corpus, to wit: *Ernest Joseph v. Attorney General*, et al., No. 4:11-cv-

525 (N.D. Fla.). *See* Exhibit C. On December 20, 2011, DHS filed an Answer asserting that removal was reasonably foreseeable. *See* Exhibit A.

DHS relied primarily on the declaration of John K. Crowther, then Deputy Assistant Director of ICE's Removal Management Division, dated December 8, 2011. *See* Declaration of John K. Crowther (Dkt. No. 15-1) (filed herewith as Exhibit I). Mr. Crowther asserted that ICE "does not foresee any difficulties" obtaining travel documents and that Plaintiff-Petitioner was "scheduled" for removal. *See* Exhibit I at pp. 1–2.Plaintiff-Petitioner filed a reply on January 4, 2012, detailing Haiti's refusal to accept him. *See* Exhibit F. Magistrate Judge William C. Sherrill, Jr. ordered DHS to file a supplemental response by January 10, 2012. *See* Exhibit G.

On February 14, 2012, Magistrate Judge Sherrill issued a Report and Recommendation reasoning the habeas petition should be granted. *See* Exhibit D. He found representations by DHS as to Petitioner-Plaintiff's removability to be speculative, uncorroborated, and insufficient under *Zadvydas*. *Id.* at pp. 8–10. On March 21, 2012, the District Court adopted the Report and Recommendation and entered judgment granting habeas relief. *See* Judgment (Dkt. No. 25) (Mar. 21, 2012) (filed herewith as Exhibit H).

Re-Detention & Irreparable Harms

Despite the absence of new facts, new evidence, or any change in circumstances relevant to removability, DHS abruptly re-detained Plaintiff-

Petitioner on December 15, 2025, during a routine reporting appointment absent prior notice, explanation, or allegation of changed circumstances. *See* Affidavit of Karen Winston (filed herewith as Exhibit J) at ¶ 4.

Plaintiff-Petitioner has been in a committed relationship with his significant other, Karen Winston, for twelve (12) years, and together they have built a stable family rooted in Jacksonville, Florida. *See* Exhibit J at ¶ 1. Ms. Winston is a member in good standing of The Florida Bar and long-time Jacksonville-based immigration attorney whose legal practice serves vulnerable noncitizens navigating an increasingly hazardous immigration system. *See* Exhibit J at ¶¶ 1, 7–8, 18–19. Plaintiff-Petitioner's detention has understandably diverted Ms. Winston's attention from active legal practice due and has thus deprived the community of critical legal representation and advocacy in immigration matters during a period of historic need. *Id.*

Plaintiff-Petitioner and Ms. Winston are the natural parents of three (3) United States citizen children: A.J., age nine (9); C.J., age seven (7); and P.J., age four (4). *See* Exhibit J at ¶ 1. The Family lives together as a single household in Jacksonville, Florida where Plaintiff-Petitioner functions as the primary caregiver and emotional center of the home. *See* Exhibit J at ¶¶ 2, 6–11. Plaintiff-Petitioner's recent re-detention instantly shattered the stability of his Family severing Plaintiff-Petitioner from his children and leaving them without their primary source of daily care, reassurance, and structure. *See*

Exhibit J at ¶¶ 3–6, 18–19. The harm inflicted by Plaintiff-Petitioner's re-detention is immediate, severe, and irreparable, and it falls most brutally on his children. *See* Exhibit J at ¶¶ 5, 18–19.

Plaintiff-Petitioner's re-detention has also plunged his Family into severe financial instability. Plaintiff-Petitioner owns and operates a paver business that provided essential income and flexibility necessary to care for three young children. *Id.* at ¶ 5. His detention eliminated that income overnight and simultaneously impaired Ms. Winston's ability to maintain her legal practice, as she must now personally absorb childcare and transportation responsibilities previously handled by Plaintiff-Petitioner, reducing her available work hours at a time of extraordinary demand for immigration legal counsel. *Id.* at ¶¶ 6–8, 18–19.

Plaintiff-Petitioner is also indispensable to the care of Ms. Winston's elderly parents, who live nearby and depend on him for physical assistance and emergency support. *Id.* at ¶¶ 29–31. Ms. Winston's father is wheelchair-bound and regularly required Plaintiff-Petitioner's assistance for transfers and mobility. *Id.* at ¶ 29. Without Plaintiff-Petitioner, these elders face heightened risk of injury, medical emergencies, and institutionalization. *Id.* at ¶¶ 29–31.

These harms are immediate, compounding, and incapable of remediation through later relief, making Plaintiff-Petitioner's continued detention intolerable under any conception of the law or due process.[2]

LEGAL STANDARD

It is well-established that a party seeking Temporary Restraining Order must show: (1) they have a substantial likelihood of success on the merits; (2) irreparable injury will occur unless a restraining order issues; (3) the equities balance in the movant's favor; and (4) if issued, the restraining order would not be adverse to the public interest. *See Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc); *see also Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005); *Wood v. Netflix, Inc.*, No. 8:22-cv-2431-CEH-AAS, 2024 U.S. Dist. LEXIS 211754, *4 (M.D. Fla. Nov. 21, 2024); Local Rule 6.01(b). Likelihood of success on the merits "is generally the most important of the four factors." *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1271 (11th Cir. 2020).

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[2] Plaintiff-Petitioner hereby incorporates by reference as if fully stated herein the facts alleged, legal authority presented, exhibits appended to his Petition-Complaint on file (Dkt. No. 1).

DISCUSSION

I. PLAINTIFF-PETITIONER DEMONSTRATES BEYOND A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

Plaintiff-Petitioner overwhelmingly demonstrates substantial likelihood of success on the merits. As detailed at length in the Petition-Complaint, Plaintiff-Petitioner's continued unlawful re-detention by DHS under 8 U.S.C. § 1231(a) and concomitant improper revocation of his Order of Supervision is wrongful, violative of statutory and regulatory law, *ultra vires*, absent any legal authority, arbitrary, capricious, an abuse of discretion, not in accordance with law, and contrary to Plaintiff-Petitioner's constitutional rights to procedural and substantive due process under the Fifth Amendment.

Plaintiff-Petitioner's likelihood of success on the merits is overwhelming. DHS has re-detained him without articulating any reason; absent any pre-deprivation notice; without making the threshold regulatory findings required by law; without identifying any material change in circumstances that could render removal to Haiti significantly likely to occur in the reasonably foreseeable future; and contrary to prior ruling by Northern District of Florida finding Plaintiff-Petitioner's continued post-order immigration detention unlawful and granting habeas relief in *Ernest Joseph v. Attorney General, et al.*, No. 4:11-cv-525 (N.D. Fla.).

This conduct violates 8 U.S.C. § 1231(a) as construed by *Zadvydas v. Davis*, 533 U.S. 678 (2001); ICE's binding regulations governing post-order custody and release/revocation, including 8 C.F.R. §§ 241.4 and 241.13; the *Accardi* doctrine; and the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690, 699–701; *Sied v. Nielsen*, No. 17-cv-06785-LB, 2018 U.S. Dist. LEXIS 66374, at *8–10 (N.D. Cal. Apr. 18, 2018); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 788 F. Supp. 3d 144, 149–52 (D. Mass. 2025); *Siguenza v. Moniz*, No. 25-CV-11914-ADB, 2025 U.S. Dist. LEXIS 188746, at *5–8 (D. Mass. Sept. 30, 2025); *Makuey v. Scott*, No. 2:25-cv-02135-DGE-BAT, 2025 U.S. Dist. LEXIS 259981, at *10–15 (W.D. Wash. Dec. 16, 2025); *Roble v. Bondi*, Case No. 25-cv-3196 (LMP/LIB), 2025 U.S. Dist. LEXIS 164108, at *5–15 (D. Minn. Aug. 25, 2025); *Karem Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198, at *5–10 (D.N.J. June 13, 2025); *Zongbo Zhu v. Genalo*, Case No. 1:25-cv-06523 (JLR), 2025 U.S. Dist. LEXIS 166176, at *26–28 (S.D.N.Y. Aug. 29, 2025); *Barrios v. Ripa*, No.: 1:25-cv-22644-GAYLES, 2025 U.S. Dist. LEXIS 153228, at *7–9 (S.D. Fla. Aug. 8, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899, at *2–4 (E.D. Tex. Aug. 2, 2025); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 U.S. Dist. LEXIS 175489, at *2–3 (S.D. Fla. Sept. 9, 2025).

This is not a case in which DHS has advanced a weak justification. DHS has advanced no justification at all. This notwithstanding the prior grant of

habeas relief related to Plaintiff-Petitioner, where no material circumstances have changed, and no developments in connection with Plaintiff-Petitioner's removability to Haiti have occurred. DHS could not meet its burden to justify continued post-order immigration detention of Plaintiff-Petitioner in 2012, and it cannot do so today. Plaintiff-Petitioner's detention by DHS remains unlawful, unauthorized, wrongful, and patently violative of statutory, regulatory, and bedrock Constitutional rights.

A. Under *Zadvydas*, Section 1231(a) Detention Absent SLRRFF Serves No Immigration Purpose and is Unlawful.[3]

Post-order custody is governed by 8 U.S.C. § 1231(a). Congress authorized detention during a 90-day "removal period," § 1231(a)(1), and permitted limited detention thereafter under § 1231(a)(6). But as the Supreme Court held in *Zadvydas*, § 1231(a)(6) cannot be read to authorize indefinite detention; that is, once removal is no longer significantly likely in the reasonably foreseeable future, continued detention is no longer authorized by statute and raises grave Fifth Amendment due process concerns. *Zadvydas*, 533 U.S. at 689–701; *see also Sied*, 2018 U.S. Dist. LEXIS 66374, at *8–10 (explaining that *Zadvydas* construes § 1231(a)(6) to avoid unconstitutional indefinite detention and permits habeas review); *Tadros*, 2025 U.S. Dist.

[3] For sake of brevity, references to the legal standard, i.e., Significant Likelihood of Removal in the Reasonably Foreseeable Future, will be abbreviated as "SLRRFF" herein.

LEXIS 113198, at *5–8 (same); *Siguenza*, 2025 U.S. Dist. LEXIS 188746, at *5–7 (same); *Nguyen*, 788 F. Supp. 3d at 149–50 (same); *Zhu*, 2025 U.S. Dist. LEXIS 166176, at *9–12 (same).

The statutory purpose of post-order immigration detention is narrow: it is meant only to ensure presence for removal. *Zadvydas*, 533 U.S. at 699. When that purpose cannot be served—because removal is not significantly likely in the reasonably foreseeable future—detention is statutorily unauthorized and Constitutionally impermissible. *Id.*; *Sied*, 2018 U.S. Dist. LEXIS 66374, at *9–10; *Tadros*, 2025 U.S. Dist. LEXIS 113198, at *8–10. There is no SLRRFF here. Nothing materialhas changed since prior habeas relief was granted by the Northern District of Florida. Haiti has still not issued travel documents. DHS still lacks primary proof of Haitian citizenship acceptable to Haitian authorities. Plaintiff-Petitioner was previously rejected by Haiti during a charter removal flight. No third-country has agreed to accept him nor would it be legally permissible for DHS to remove Plaintiff-Petitioner to a third-country.[4] DHS identifies no new diplomatic breakthrough, no newly

[4] It would be unlawful for DHS to remove Plaintiff-Petitioner to a third-country absent either his voluntary consent or constitutionally adequate due process. *See D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. Apr. 18, 2025) (certifying nationwide class and entering preliminary injunction requiring written notice and a meaningful opportunity to seek CAT protection before removal to a third country), *appeal pending*, No. 25-1393 (1st Cir.); *DHS v. D.V.D.*, 145 S. Ct. 2153 (Jun. 23, 2025) (granting emergency application by DHS to stay preliminary injunction pending appeal).

obtained identity documents, and no concrete removal plan. Instead, DHS has simply re-detained Plaintiff-Petitioner for sake of detention only in order to meet aggressive immigration enforcement quotas related to detention. *See* Nick Miroff and Maria Sacchetti, "Trump Seeks to Fast-Track Deportations of Hundreds of Thousands," The Washington Post (Feb. 28, 2025) (citing Feb. 18, 2025 memorandum, available at https://perma.cc/VKT4-ZB2G) (internal ICE memorandum instructing officers to pursue re-detention based on enforcement priorities rather than individualized likelihood of removal).

B. Regulations Impose Strict Preconditions to Post-Order Re-Detention Following Release.

Post-order re-detention requires "changed circumstances" and concrete foreseeability determination. Once DHS has released a person under an Order of Supervision (because removal is not reasonably foreseeable, *see* § 1231(a)(3)), its ability to revert to detention is constrained by its own regulations, to wit: 8 C.F.R. § 241.13(i)(2). Under same, DHS may revoke release and return the person to custody only if, "on account of changed circumstances," it determines that "there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *See* 8 C.F.R. § 241.13(i)(2); *see also Nguyen*, 788 F. Supp. 3d at 149–50; Roble, Case No. 25-cv-3196 (LMP/LIB), 2025 U.S. Dist. LEXIS 164108, at *7–12; Siguenza, Civil Action No. 25-CV-11914-ADB, 2025 U.S. Dist. LEXIS 188746, at *5–8; Makuey, CASE NO. 2:25-cv-02135-

DGE-BAT, 2025 U.S. Dist. LEXIS 259981, at *6–9; Escalante, CIVIL ACTION NO. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899, at *2–4.

Courts have repeatedly recognized that § 241.13(i)(2) requires an individualized, fact-driven determination—not mere implementation of a quota-driven immigration enforcement priority. Nguyen, 788 F. Supp. 3d at 149–51; *Roble*, 2025 U.S. Dist. LEXIS 164108, at *7–14; *Siguenza*, 2025 U.S. Dist. LEXIS 188746, at *5–8; *Makuey*, 2025 U.S. Dist. LEXIS 259981, at *6–10.

In this instance, DHS has not merely failed to prove changed circumstances. ICE has not asserted changed circumstances. ICE has provided nothing—no new facts regarding Haiti, no travel document development, no third-country acceptance, no diplomatic breakthrough, no newly available removal pathway. Under the regulation, that ends the analysis: when the regulatory predicate is absent, ICE has no authority to re-detain. See Roble, Case No. 25-cv-3196 (LMP/LIB), 2025 U.S. Dist. LEXIS 164108, at *12–14 (rejecting vague, content-free "changed circumstances" claims); Nguyen, Civil Action No. 25-cv-11470-MJJ, 788 F. Supp. 3d at 150–51 (rejecting "scant information" and lack of concrete steps); Tadros, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198, at *8–10 (Government must rebut the showing with evidence; conclusory statements are insufficient); Siguenza, Civil Action No. 25-CV-11914-ADB, 2025 U.S. Dist. LEXIS 188746, at *5–8 (re-detention

challenged on statutory, regulatory, and Fifth Amendment grounds where foreseeability not shown).

Additionally, Section 241.13(i)(3) mandates that upon revocation, the person "will be notified of the reasons for revocation" and that DHS must conduct a prompt informal interview to afford an opportunity to respond. *See* 8 C.F.R. § 241.13(i)(3). Courts have treated this requirement as central to legality. In *Roble*, the notice merely parroted the regulation and stated no actual reasons; the District Court held this "border[s] on the Kafkaesque" and is unlawful because one cannot respond to reasons that are not stated. *See Roble*, 2025 U.S. Dist. LEXIS 164108, at *9–10. In *Nguyen*, the District Court likewise demanded concrete, individualized facts and rejected thin, conclusory justifications. *Nguyen*, 788 F. Supp. 3d at 150–51. In *Zhu*, the District Court stressed that if release was under § 241.13, then re-detention "plainly violated" § 241.13's procedural requirements, including notice of reasons. *Zhu*, 2025 U.S. Dist. LEXIS 166176, at *26–28. In *Grigorian*, the District Court reiterated that immigration discretionary authority "is not a license to cut corners" and that failure to comply with regulations and due process warrants habeas relief. *Grigorian*, 2025 U.S. Dist. LEXIS 175489, at *2.[5]

[5] Under the long-standing and now axiomatic *Accardi* doctrine, when an agency fails to follow its own regulations—especially regulations designed to safeguard fundamental liberty interests—its actions are invalid. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

This case is more extreme than *Roble* and allied. In *Roble*, DHS at least issued a paper that mimicked a reason. Here DHS has issued nothing. No reasons. No pre-deprivation notice. No prompt meaningful process. That failure violates both § 241.13(i)(3) and the Fifth Amendment's core requirement of notice and a meaningful opportunity to be heard. *See Makuey*, 2025 U.S. Dist. LEXIS 259981, at *10–12 (Fifth Amendment due process requires opportunity to be heard "at a meaningful time and in a meaningful manner," applying *Mathews* balancing in immigration detention context); *Roble*, 2025 U.S. Dist. LEXIS 164108, at *9–10; *Zhu*, 2025 U.S. Dist. LEXIS 166176, at *26–28.[6]

But the crucial point here is even simpler. DHS has not even taken the first step. It has not invoked § 241.4, § 241.13, or any other authority in any reasoned way. It has provided no reasons, no individualized determination, no changed circumstances, no process. *See Roble*, 2025 U.S. Dist. LEXIS 164108, at *9–10 (due process requires notice and opportunity to respond; failure is unlawful); *see also Makuey*, 2025 U.S. Dist. LEXIS 259981, at *10–12 (process must be meaningful); *Zhu*, 2025 U.S. Dist. LEXIS 166176, at *26–

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[6] Further, DHS cannot evade § 241.13 by invoking § 241.4; even under § 241.4, notice/process problems remain and DHS still must justify the deprivation. ICE sometimes attempts to characterize revocation as proceeding under 8 C.F.R. § 241.4. But District Courts regularly scrutinize that maneuver, and it does not rescue an agency that offers no reason and no process.

28 (warning against detention without reasons). It merely disappeared and detained Plaintiff-Petitioner despite his long-standing Order of Supervision with which he perfectly complied for over a decade. All this against the backdrop of the Northern District of Florida already undertaken close examination of Plaintiff-Petitioner's post-order immigration detention, ruling it unlawful, and ordering his release as habeas relief.

* * *

This Court is not writing on a blank slate. Its sister court has already examined Plaintiff-Petitioner's post-order detention and granted habeas relief. *See Ernest Joseph v. Attorney General, et al.*, No. 4:11-cv-525 (N.D. Fla.) (relevant pleadings at Exhibits A-I hereto). That prior ruling necessarily included consideration of: (1) the statutory and constitutional limitations on Plaintiff-Petitioner's post-order immigration detention; (2) determination that DHS lacked lawful authority to detain; (3) no significant likelihood of removal in the reasonably foreseeable future exists, all of which establishes that DHS cannot lawfully re-detain Plaintiff-Petitioner absent a genuine material change in circumstances. It cannot do so here. The same impediments to Plaintiff-Petitioner's removal to Haiti exist. Nothing has changed.

Based on the foregoing, as well as the well-pleaded allegations and legal authorities presented in his Petition and Complaint (Dkt. No. 1), Plaintiff-Petitioner demonstrates a significant likelihood of success on the merits.

II. PLAINTIFF-PETITIONER, HIS UNITED STATES CITIZEN PARTNER, AND HIS THREE UNITED STATES CITIZEN CHILDREN WILL SUFFER IRREPARABLE INJURY ABSENT PROMPT ENTRY OF A TEMPORARY RESTRAINING ORDER.

As a threshold point, "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1205 (S.D. Fla. 2020) (Cooke, J.) (internal quotations omitted) (*quoting Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom 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."); *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1988) (holding that "unnecessary deprivation of liberty clearly constitutes irreparable harm"). Accordingly, continued unlawful detention by ICE under 8 U.S.C. § 1225(b)(2) constitutes *per se* irreparable harm.

Any ongoing violation of a constitutional right also constitutes *per se* irreparable injury. *See Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1128 (11th Cir. 2022); *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020); *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983) (quotation marks omitted); *FF Cosms. FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017). Plaintiff-Petitioner herein alleges violation of his Fifth Amendment

right to procedural due process. *See* Compl. at ¶¶ 148–157. Based upon this factor alone, Plaintiff-Petitioner sufficiently demonstrates irreparable harm.

This stated, putting aside the unlawful deprivation of liberty at stake, Plaintiff-Petitioner also demonstrates irreparable harms will follow to his Family absent entry of a Temporary Restraining Order by this Court. Directly due to and as a result of his unlawful detention by DHS, his Family is suffering emotionally, psychologically, financially, logistically, and especially related to caregiving for their three (3) young United States children one of which is significantly disabled with special needs. *See* Affidavit (Exhibit J) at ¶¶ 11–16 (special-needs child and caregiving), ¶¶ 7, 18–19 (financial harm), ¶¶ 5, 20–22 (family turmoil).

Each day of confinement not only deprives Plaintiff-Petitioner of physical liberty but also subjects him to acute psychological distress, anxiety, and uncertainty, which harm radiates outward to his Family—suffering ongoing emotional and psychological trauma, fear, instability, and disruption—which harm further radiates to the public at large by collateral interruption of immigration legal assistance Ms. Winston has provided for years serving

vulnerable individuals in our community during a time of extreme need. These harms cannot be meaningfully redressed later.[7]

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST STRONGLY FAVOR PLAINTIFF-PETITIONER.

The final two elements merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *LaCroix v. Town of Fort Myers Beach*, 38 F.4th 941, 955 (11th Cir. 2022). They require Plaintiff-Petitioner to clearly establish that the threatened injury to him outweighs whatever damage the proposed injunction may cause to Defendants-Respondents and that, if issued, the injunction would not disserve (or be adverse to) the public interest. *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010) (*citing Garcia-Mir v. Meese*, 781 F.2d 1450, 1455 (11th Cir. 1986)); *Wreal*, 480 F.3d at 1247.

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[7] Prohibiting the government from utilizing procedures that will likely result in unconstitutional detentions—thus prevention of future constitutional violations—is a classic form of prohibitory injunction applied in the context of unlawful detention. *See Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017) (requiring government to conduct constitutional bond hearings in immigration detention); *see also Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018, 221 L. Ed. 2d 655 (2025) ("order properly requires the Government to 'facilitate' Abrego Garcia's release from custody in El Salvador and to ensure that his case is handled as it would have been had he not been improperly sent to El Salvador."). In such cases, mandatory injunctions, while subject to a higher standard than prohibitory injunctions, are permissible when "extreme or very serious damage will result" that is not "capable of compensation in damages," and the merits of the case are not "doubtful." *Hernandez*, 872 F.3d at 999. Put another way, mandatory injunctions are most likely to be appropriate when "the *status quo* . . . is exactly what will inflict the irreparable injury upon complainant." *See Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816, 830 n.21 (D.C. Cir. 1984). This is just such a case. The *status quo* is what is inflicting the irreparable injury on Plaintiff-Petitioner and his Family.

Proper application of the Constitution and statutory authority for detention of noncitizens serves the public interest because it is always in the public interest to prevent the violation of individual constitutional rights. *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019) ("[T]he public interest is served when constitutional rights are protected."). Conversely, neither the government nor the public has any legitimate interest in accomplishing or enforcing an unlawful and unconstitutional deprivation of liberty. *Otto*, 981 F.3d at 870; *LaCroix*, 38 F.4th at 955.

IV. THIS COURT SHOULD WAIVE ANY BOND REQUIREMENT.

Rule 65(c) requires that a party seeking preliminary injunctive relief provide security "in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." *See* FED. R. CIV. P. 65(c).

However, the bond requirement of Rule 65(c) is appropriately waived in certain circumstances. *See Johnston v. Tampa Sports Auth.*, No. 8:05-CV-2191-T-27MAP, 2006 U.S. Dist. LEXIS 77614, *1-2 (M.D. Fla. Oct. 13, 2006); *Baldree v. Cargill, Inc.*, 758 F. Supp. 704 (M.D. Fla. 1990), *aff'd*, 925 F.2d 1474 (11th Cir. 1991) (district court has discretion to waive bond requirement imposed by Rule 65(c)); *see also Caterpillar, Inc. v. Nationwide Equip.*, 877 F. Supp. 611 (M.D. Fla. 1994) (waiving bond requirement).

In the Eleventh Circuit, "it is well-established that 'the amount of security required by the rule is a matter within the discretion of the trial court . . . [, and] the court may elect to require no security at all.'" *BellSouth Telecomms., Inc. v. MCImetro Access Transmission Servs.*, 425 F. 3d 964, 971 (11th Cir. 2005) (alteration in original) (*quoting City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981)). Moreover, "[w]aiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right." *Curling v. Raffensperger*, 491 F. Supp. 3d 1289, 1326 n.25 (N.D. Ga. 2020) (*quoting Complete Angler, LLC v. City of Clearwater*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009)).

The Court should exercise its discretion to waive bond in this instance. First, no potential economic loss to the enjoined party is implicated. Second, bond would impose undue financial hardship on Plaintiff-Petitioner and likely deter others from vindicating their rights in connection with the patently unlawful widespread revocation of OSUP and detention of noncitizens by DHS under 8 U.S.C. § 1231(a) to the substantial prejudice of those noncitizens and others across the Nation. Third, there is no fair and equitable way to valuate or monetize the enforcement of federal immigration prerogatives (or here returning to *status quo* an adverse civil and administrative action). Finally, and most important, Plaintiff-Petitioner herein alleges infringement of his

Fifth Amendment fundamental right to procedural due process. This factor makes any requirement of bond here particularly inappropriate as District Courts regularly and routinely waive bond in connection with temporary or preliminary injunctive relief where constitutional violations are alleged.

CONCLUSION

WHEREFORE, Plaintiff-Petitioner respectfully requests the Court enter an Order: (a) enjoining Defendants-Respondents from continuing to detain Plaintiff-Petitioner under 8 U.S.C. § 1231(a); (b) directing Defendant-Respondents to release Plaintiff-Petitioner from immigration detention by 5:00 p.m. EST on December 24, 2025, with prior written notice to undersigned counsel as to date, time, and place of Plaintiff-Petitioner's release; (c) enjoining re-detention of Petitioner-Plaintiff by DHS absent (i) evidence of materially changed circumstances and (ii) sufficient prior written notice to Plaintiff-Petitioner and a constitutionally adequate individualized opportunity to be heard; (d) enjoining Defendants-Respondents—upon any prospective re-detention in accordance with (c)(i)-(c)(iii) above—from transferring, relocating, or removing Plaintiff-Petitioner outside the jurisdiction of the Middle District of Florida absent either written consent by undersigned counsel for Plaintiff-Petitioner or prior approval by the Court; (e) waiving any bond requirement at

FED. R. CIV. P. 65(c); and (f) setting an expedited briefing schedule on preliminary injunctive relief.[8]

Date: December 22, 2025

Respectfully submitted,

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CERTIFICATION OF COUNSEL
FED. R. CIV. P. 65(b)(1)(B)

I HEREBY CERTIFY, in accordance with FED. R. CIV. P. 65(b)(1)(B), effort was made to provide notice of this Emergency Motion for Temporary Restraining Order to Defendants by transmitting a copy of the foregoing via facsimile to: 904-301-6310, which is the facsimile number provided on the public website for the Jacksonville office of the United States Attorney for the Middle District of Florida. A copy was also transmitted via email to Randy Harwell, Civil Chief at the Headquarters office of the United States Attorney for the Middle District of Florida.

/s/ Christopher W. Dempsey
CHRISTOPHER W. DEMPSEY

[8] In accordance with Local Rule 6.01(1)(6), a proposed order is filed herewith.