UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MEYERS DIVISION

STEPHEN O. BANJOKO, Plaintiff-Petitioner, v. **KEVIN J. RAMBOSK**, **GARRETT J. RIPA**, **TODD LYONS**, **KRISTI NOEM**, and **PAMELA BONDI**, Defendants-Respondents.	Civil No. 2:26-cv-00058-KCD-DNF

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

COMES NOW Plaintiff-Petitioner STEPHEN OLUSEGUN BANJOKO, 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 January 21, 2026, 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

Identity, Immigration History & Final Order of Removal

Plaintiff-Petitioner is a native and citizen of Nigeria who has resided in the United States since his initial entry in or about 1994. *See* Motion to Reopen (filed herewith as Exhibit A). He adjusted his status to that of lawful permanent resident on August 13, 1998, and the conditions on his residence were removed on October 27, 2000. *See* Exhibit A at p. 2.

On December 23, 2003, DHS initiated removal proceedings against Plaintiff-Petitioner following a federal criminal conviction for conspiracy to commit witness tampering. *See* Exhibit A at pp. 2–3. On June 15, 2009, an Immigration Judge ordered Plaintiff-Petitioner removed from the United States. *See* Exhibit A at p. 3.

Prior Post-Order Immigration Detention & Release

Following entry of the final removal order, DHS detained Plaintiff-Petitioner in post-removal-order immigration detention pursuant to 8 U.S.C. § 1231(a)(6) from approximately July 2012 through April 2013. *See* Exhibit A at pp. 4–5. After approximately nine (9) months of detention, DHS released Plaintiff-Petitioner from custody under an order of supervision. *See* Exhibit A at p. 5.

From April 2013 to December 18, 2025, Plaintiff-Petitioner remained at liberty subject to an order of supervision. Plaintiff-Petitioner complied fully with all terms and conditions imposed by DHS. His Reporting and Compliance Log reflects consistent reporting to ICE on numerous occasions, including September 10, 2019; May 18, 2022; July 18, 2023; October 1, 2024; and November 3, 2025, among other dates set or required by DHS. *See* Compliance Log and Plan of Action (filed herewith as Exhibit B) at pp. 1–2. At no point during this over twelve (12) year period did DHS allege Plaintiff-Petitioner violated any condition of supervision, failed to report, posed a danger to the community, or presented any risk of flight. *See* Exhibit B at pp. 1–2.

Marriage to United States Citizen & Motion to Reopen

On January 11, 2016, Plaintiff-Petitioner married naturalized United States citizen Modupe Bamidele Casey Banjoko. *See* Exhibit A at p. 5; *see also* Affidavit of Modupe Bamidele Casey Banjoko (filed herewith as Exhibit C) at

¶¶ 4–6. Based on that *bona fide* marriage, Plaintiff-Petitioner's spouse filed a Form I-130, Petition for Alien Relative, for the benefit of Plaintiff-Petitioner. USCIS approved the Form I-130, on February 2, 2023, thus classifying Plaintiff-Petitioner as the immediate relative of a United States citizen. *See* Exhibit A at pp. 5–6

On or about October 16, 2025, Plaintiff-Petitioner filed a Motion to Reopen and Motion for Stay of Removal with the Board of Immigration Appeals. *See* Exhibit A at p. 1. His Motion to Reopen seeks reopening of removal proceedings to permit pursuit of adjustment of status under INA § 245, or in the alternative, dismissal or administrative closure for USCIS adjudication based on newly available evidence including the approved Form I-130 petition and hardship to qualifying relatives. *See* Exhibit A at pp. 6–10. That Motion to Reopen remains pending. *Id.* at p. 1.

Abrupt Revocation of Supervision & Re-Detention

On December 18, 2025, Plaintiff-Petitioner and his spouse appeared at the Cypress Street DHS Facility in Tampa, Florida, for what Plaintiff-Petitioner reasonably believed to be a routine check-in under the terms of his order of supervision, consistent with a dozen-plus years of prior practice. *See* Exhibit C at ¶¶ 12–13. After being escorted to the rear of the facility, Plaintiff-Petitioner did not return. Hours later, DHS officials informed Plaintiff-

Petitioner's spouse that supervised release had been revoked and that her Husband had been taken into custody. *See* Exhibit C at ¶¶ 14–16

DHS officials provided no advance notice, written explanation, or allegation of noncompliance as the basis for revocation of Plaintiff-Petitioner's order of supervision.[1] *See* Exhibit C at ¶¶ 15–18.

Family, Community Ties & Resulting Harms

Plaintiff-Petitioner and his United States citizen spouse are the parents of three (3) United States citizen children, all of whom have resided their entire lives in the United States. *See* Exhibit A at p. 5; *see also* Exhibit C at ¶¶ 5–8. Plaintiff-Petitioner's spouse suffers from serious medical and psychological conditions that have been exacerbated by her Husband's detention, including severe anxiety, depression, and trauma-related symptoms. *See* Exhibit C at ¶¶ 19–25.

Plaintiff-Petitioner and his spouse also jointly operate a healthcare-related business in the Tampa Bay, Florida region that employs multiple individuals and provides essential services to the community. Plaintiff-Petitioner's detention has jeopardized the continued operation of that business and the livelihoods dependent upon it. *See* Letters of Support (filed herewith

[1] DHS had previously issued a "Plan of Action for Self-Departure" dated November 3, 2025, directing Plaintiff-Petitioner to report to the Cypress Street DHS Facility on February 3, 2026, and thereafter depart the United States by August 3, 2026. *See* Exhibit B at p. 3.

as Exhibit D) at pp. 1–3. Numerous community members attest that Plaintiff-Petitioner is a stabilizing, compassionate, and indispensable presence in his Family and community, and that his detention has caused immediate emotional, financial, and social harm. *See* Exhibit D at pp. 1–3. 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]

Absence of Reasonably Foreseeable Removal

Plaintiff-Petitioner was previously detained under 8 U.S.C. § 1231(a)(6) and released subject to an order of supervision after DHS failed to effectuate his removal during the nine (9) months he was held in immigration detention. *See* Exhibit A at pp. 4–5. Since his release subject to an order of supervision in April 2013, DHS permitted Plaintiff-Petitioner to remain at liberty under supervision for more than twelve (12) years.

Plaintiff-Petitioner perfectly complied with his order of supervision at all times and otherwise lived as responsible, law abiding, and community-minded positive influence on his Family and others. Plaintiff-Petitioner is unaware of any material change in circumstances that would now render his removal to Nigeria significantly likely to occur in the reasonably foreseeable future.

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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).

Indeed, diplomatic relationships between the United States and Nigeria have worsened since DHS last released Plaintiff-Petitioner from immigration detention in April 2013, due to animus including recent Christmas Day military strikes involving Tomahawk missiles by the United States inside Nigeria. See Alexander Palmer, "Why Did the United States Conduct Strikes in Nigeria?," Center for Strategic & Int'l Studies (Dec. 26, 2025) (available at: https://www.csis.org/analysis/why-did-united-states-conduct-strikes-nigeria). These geopolitical conditions are anticipated to further complicate and make less likely repatriation efforts.

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).

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 Nigeria significantly likely to occur in the reasonably foreseeable future.

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 where no material circumstances have changed, and no developments in connection with Plaintiff-Petitioner's removability to Nigeria have occurred. DHS could not meet its burden to justify continued post-order immigration detention of Plaintiff-Petitioner in

2013, 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. 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.

[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.

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 material has changed. Nigeria has still not issued travel documents. 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 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). Indeed, it would seem that removal is even less likely to occur in the reasonably foreseeable

[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).

future as diplomatic relationships between the United States and Nigeria have worsened since DHS last released Plaintiff-Petitioner from immigration detention in April 2013, due to animus including recent Christmas Day military strikes involving Tomahawk missiles by the United States inside Nigeria. See Alexander Palmer, "Why Did the United States Conduct Strikes in Nigeria?," Center for Strategic & Int'l Studies (Dec. 26, 2025) (available at: https://www.csis.org/analysis/why-did-united-states-conduct-strikes-nigeria). Additionally, the United States just imposed visa sanctions on Nigeria, among other countries, which virtually guarantees reciprocal hostility by Nigeria to requests for repatriation of Nigerian nationals. *See* Mariam Khan, "US to Suspend Visa Processing for 75 Countries Starting Next Week," ABC NEWS (Jan. 14, 2026) (available at: https://abcnews.go.com/US/us-suspend-visa-processing-75-countries-starting-week/story?id=129210370).

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 Section 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. However, in this instance, DHS has not merely failed to prove changed circumstances. DHS has not asserted changed circumstances. DHS has provided nothing—no new facts regarding Nigeria, 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, DHS has no authority to re-detain. *See Roble*, 2025 U.S. Dist. LEXIS 164108, at *12–14 (rejecting vague, content-free "changed circumstances" claims); *Nguyen*, 788 F. Supp. 3d at 150–51 (rejecting "scant information" and lack of concrete steps); *Tadros*, No. 25-cv-4108 (EP), 2025 U.S. Dist. LEXIS 113198, at *8–10 (Government must rebut

the showing with evidence; conclusory statements are insufficient); *Siguenza*, 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

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 Sections 241.4 or 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,

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fundamental liberty interests—its actions are invalid. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

[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. DHS 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.

at *26–28 (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.

Finally, this action does not present a case of first impression for this District. *See Beltran v. Ripa*, No. 2:25-cv-01174-SPC-NPM, 2026 U.S. Dist. LEXIS 273, at *3–4 (M.D. Fla. Jan. 5, 2026). In *Beltran*, the Judge Chappell exercised jurisdiction; reviewed an eerily similar *Zadvydas* habeas involving OSUP revocation absent process; and granted habeas relief. The same result should logically follow here. 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 SPOUSE, 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, and logistically. *See* Exhibit C at ¶¶ 25-80.

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 their business enterprise. These harms cannot be meaningfully redressed later.

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.

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. THE APPROPRIATE AND LEGALLY REQUIRED REMEDY IS RETURN TO THE *STATUS QUO ANTE*.

It is axiomatic that release from unlawful detention is the normative relief in the context of unlawful deprivation of liberty. Ordinarily, the purpose of preliminary injunctive relief is preservation of the *status quo* which enables the court to render a meaningful decision on the merits. *See United States v. Lambert*, 695 F.2d 536, 539 (11th Cir. 1983); *see also Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974); *see also Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

However, Courts have also long held that the *status quo* for the purposes of considering a temporary restraining order or preliminary injunction refers to the last peaceable uncontested status existing between the parties before the dispute developed. *Canal Auth.*, 489 F.2d at 576 ("If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, either by returning to the last uncontested *status quo* between the parties, by the issuance of a mandatory injunction, or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury.") (citations omitted); *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1013 (10th Cir. 2004) ("[s]tatus quo does not mean the situation existing at the moment

the lawsuit is filed, but the last peaceable uncontested status existing between the parties before the dispute developed.").

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).[7] This is just such a case. The *status quo* is what is inflicting the irreparable injury on Petitioner and his Family.

As the Second Circuit has explained, since "the proposed injunction's effect on the status quo drives the standard, [the court's first step is to] ascertain the *status quo* — that is, 'the last actual, peaceable uncontested status which preceded the pending controversy.'" *North Am. Soccer League v. U.S. Soccer Fed'n*, 883 F.3d 32, 37 (2d Cir. 2018) (*quoting Mastrio v. Sebelius*, 768 F.3d 116, 120 (2d Cir. 2014) (per curiam) (*quoting LaRouche v. Kezer*, 20 F.3d 68, 74 n.7 (2d Cir. 1994)) (footnote omitted). In the context of a preliminary injunction, "[t]he 'status quo' . . . is really a 'status quo ante.'" *Id.* at 37 n.5 (citations omitted). The Second Circuit explained that "[t]his special 'ante' formulation of the *status quo* in the realm of equities shuts out defendants seeking shelter under a current 'status quo' precipitated by their wrongdoing." *Id.*; *see also O Centro*, 389 F.3d at 1012.

Based on the foregoing, the Court should grant Plaintiff-Petitioner's request to enjoin Defendants-Respondents from unlawfully detaining him absent SLRRFF and pursuant to OSUP revocation absent any process

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[7] "The office of a preliminary injunction is to preserve the status quo until, upon final hearing, the court may grant full relief. Generally, this can be accomplished by an injunction prohibitory in form, but it sometimes happens that the *status quo* is a condition not of rest, but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant . . . . In such a case courts of equity issue mandatory writs before the case is heard on its merits." *Friends for All Children*, 746 F.2d at 830 n.21 (*citing Toledo, A.A. & N.M. Ry. Co. v. Pennsylvania Co.*, 54 F. 730, 741 (C.C.N.D. Ohio 1893)).

including adherence to the regulatory provisions at 8 C.F.R. §§ 241.4 & 241.13.[8]

V. 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

[8] In the alternative, if the Court is not inclined to order return to the *status quo ante* by ordering release of Plaintiff-Petitioner, it should at least enjoin Defendants-Respondents from moving him outside the Middle District of Florida during the pendency of this case (common strategy by DHS when confronted with habeas action). Additionally, if the Court does not order release—in light of significant likelihood of success on the merits and irreparable harms involved herein—Plaintiff-Petitioner respectfully requests the Court should expedite the briefing schedule by requiring the DHS to respond to the Order to Show Cause by January 23, 2026, with right of Reply by Plaintiff-Petitioner within seven (7) days thereof. This alternative remedy will properly balance the compelling liberty interest of Plaintiff-Petitioner and irreparable harms. DHS is not anticipated to make any novel arguments here; indeed, undersigned counsel is beyond confident that DHS will make the exact same arguments it made in *Beltran* and other habeas actions being litigated in this District, which all lack merit and have uniformly failed in similar cases.

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 January 21, 2026, 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.[9]

Date: January 16, 2026

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: 239-461-2219, which is the facsimile number provided on the public website for the Fort Meyers 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

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