

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

H.F.S.R.)	
)	
Petitioner,)	
)	CASE NO.:
vs.)	
)	
LADEON FRANCIS, <i>ICE Atlanta</i>)	
<i>Field Office Director; and</i>)	
TODD LYONS, <i>in his official capacity as Acting</i>)	
<i>Director of Immigration and Customs</i>)	
<i>Enforcement; and</i>)	
KRISTI NOEM, <i>Secretary of Homeland Security</i>))	
And PAMELA BONDI, <i>U.S. Attorney General.</i>)	
)	
Respondents.)	
_____)	

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

COMES NOW Petitioner, H.F.S.R., and files this Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction. Petitioner hereby requests the Court to issue a temporary restraining order and/or preliminary injunction, pursuant Fed. R. of Civ. P. 65, to “prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits,” and “to insure that a remedy will be available.” *U.S. v. State of Ala.*, 791 F.2d 1450, 1459 (11th Cir. 1986), *citing Corrigan Dispatch Co. v. Casa Guzman, S. A.*, 569 F.2d 300, 302 (5th Cir. 1978). *See also Granny Goose Foods,*

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

Petitioner faces imminent and irreparable harm due to the threat of an unlawful arrest and detention at his upcoming immigration court hearing on January 21, 2026. As detailed in the contemporaneously filed Amended Verified Petition for Writ of Habeas Corpus (“Petition”), Respondents have implemented a nationwide policy of arresting noncitizens at their court hearings to place them in mandatory detention under an unlawful interpretation of 8 U.S.C. § 1225(b). Because no administrative remedy exists to prevent this unlawful action, judicial intervention is necessary at this time to prevent irreparable harm.

Through the instant Motion, Petitioner seeks an order restraining Respondents from unlawfully arresting and detaining him and to preserve the status quo—his liberty—while this Court considers the merits of his Petition. Specifically, Petitioner asks this Court to enjoin Respondents from arresting him at or near the courthouse in connection with his January 21, 2026, hearing and from subjecting him to mandatory detention under 8 U.S.C. § 1225(b). This relief is necessary to prevent Respondents from acting on their unlawful policy, which has been documented through widespread courthouse arrests across the country, including in Atlanta, Georgia.

There is no remedy at law that can adequately compensate Petitioner for

the consequences of the threatened unlawful detention, which would include the immediate loss of his liberty, separation from his son, and loss of his employment. The act of unlawful arrest and even a short period of confinement constitutes irreparable harm that cannot be undone. An injunction is required to prevent this harm from occurring.

This Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction is necessary, just, and of an imminent nature because DHS through ICE threatens to unlawfully detain Petitioner contrary to law and the U.S. Constitution. Petitioner's imminent threat of unlawful detention is justifying the need for Court intervention to prevent irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (loss of constitutional freedoms constitutes irreparable injury). In addition, there is no remedy at law that can adequately compensate Petitioner for the consequences of unlawful detention and if continued could lead to irreversible impacts.

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

Restraining Order and/or Preliminary Injunction filed contemporaneously herewith.

If Respondents are not enjoined, Petitioner faces the impossible choice of either attending his hearing and suffering an unlawful arrest or failing to appear and being ordered removed *in absentia*. The threatened arrest is not based on any individualized finding that he is a danger or flight risk, but on a blanket policy that has been declared unlawful by a federal court. This threatened loss of liberty will cause tremendous hardship to Petitioner and his family and subverts the statutory scheme that requires individualized custody determinations under 8 U.S.C. § 1226(a).

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

1. **ENJOIN** Respondents from arresting or detaining Petitioner at or after his hearing on January 21, 2026, under the authority of 8 U.S.C. § 1225(b) and throughout the pendency of these proceedings;
2. **DECLARE** that any detention of Petitioner must be effected pursuant to 8 U.S.C. § 1226(a), which provides a warrant and strict compliance with the regulations including an individualized

assessment, and strict compliance with due process which includes a pre-deprivation hearing by a neutral decision maker;

3. In the alternative, if Petitioner is detained before the Court can rule, **ORDER** his immediate release; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 15th Day of January, 2026.

/s/ Karen Weinstock
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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 January 15th, 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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MEMORANDUM OF AUTHORITIES
IN SUPPORT OF PETITIONER’S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY
INJUNCTION

I. INTRODUCTION AND PROCEDURAL HISTORY

By and through his Counsel, Petitioner files this Memorandum of Authorities in Support of Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction. Petitioner fears potential detention by the Department of Homeland Security (DHS or the Department), specifically Immigration and Customs Enforcement (ICE), despite them having no lawful reason to detain Petitioner.

The purpose of a TRO is to preserve the status quo to prevent irreparable harm and allow the court to render a meaningful decision on the merits. Here, the status quo is Petitioner's liberty. Respondents threaten to imminently and unlawfully disrupt that status quo by arresting Petitioner at his court hearing under a void legal theory. The "last uncontested status between the parties which preceded the controversy" is Petitioner's current freedom. *See O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1013 (10th Cir. 2004). Accordingly, Petitioner seeks a prohibitory injunction to prevent Respondents from wrongfully altering this status quo. Such an order does not compel a disfavored affirmative act but simply enjoins an imminent, unlawful one, which is the classic function of a TRO.

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.* Petitioner should not be detained.

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 preserve the status quo and prevent irreparable harm that is actual and imminent. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). The status quo is the “last uncontested status between the parties which preceded the controversy,” which here is Petitioner’s liberty. *Stemple v. Bd. of Ed. of Prince George’s Cnty.*, 623 F.2d 893, 898 (4th Cir. 1980). An

injunction to preserve that liberty by enjoining Respondents' threatened unlawful action is a classic prohibitory injunction.

Petitioner recognizes that injunctive relief is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief and that the possibility of harm or remote harm would not suffice. To obtain a temporary restraining order and/or a preliminary injunction, Petitioner must establish: "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction [is] not granted; (3) that the threatened injury to the plaintiff outweighs the harm an injunction may cause the defendant[s]; and (4) that granting the injunction would not disserve the public interest." *Tepper v. Miller*, 82 F.3d 989, 992-93 n.3 (11th Cir. 1996), *referencing Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir.1994). As will be shown below, all four considerations weigh in favor of granting Petitioner the Order he seeks.

The plain terms of 8 U.S.C. § 1252(f)(1) proscribe the Court's ability to issue injunctive relief. Habeas relief has long been recognized as a unique and district remedy. The Court has broad discretion to fashion appropriate remedies to dispose of habeas corpus matters "as law and justice require." 28 U.S.C. § 2243. *See Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). A "habeas corpus proceeding must not be allowed to fonder in a 'procedural morass'" and the "power of federal courts to conduct inquiry in habeas corpus is equal to the

responsibility which the writ involves.” *Harris v. Nelson*, 394 U.S. 286, 291-2 (1969). That responsibility is greatest where, as here, the Court is reviewing “detention by executive authorities without judicial trial.” *Brown v. Allen*, 344 U.S. 443, 533 (1953); *Boumediene v. Bush*, 553 U.S. 723, 783 (2008).

The function of preliminary injunctive relief is to **prevent irreparable harm and preserve the status quo pending final adjudication.** Petitioner’s case involves the rare circumstance in which Petitioner and his 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 due process. The only “harm” to Respondents is that they would not be able to unlawfully detain Petitioner. The rare magnitude of the harm that Petitioner and his family will suffer, the imminence of that substantial harm, and the total inability to remedy such harm if the Court does not enjoin Respondents, warrants the issuance of a TRO and/or preliminary injunction in this instance.

III. ARGUMENT

Petitioner need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial. Petitioner must demonstrate more than just a “possibility” of irreparable harm. “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with

our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a ‘clear showing’ that the plaintiff is entitled to relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008).

As will be shown below, Petitioner meets all 4 *Winter* criteria and merits the grant of a Temporary Restraining Order and/or Preliminary Injunction. Petitioner is likely to succeed on the merits of his claims because his potential detention due to an ultra vires agency action and in violation of his Due Process rights under the U.S. Constitution violates both the law and the Constitution. Petitioner will suffer irreparable harm if ICE continues to unlawfully detain Petitioner. Any of these actions (or all) will result in irreparable harm to Petitioner. Last, the balance of equities and public interest weigh in Petitioner’s favor because he has presented significant equities that outweigh those of Respondents and because the public has a strong interest in having the government follow the law and the U.S. Constitution.

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

Petitioner has a substantial likelihood of success on the merits for several independent reasons, the most dispositive of which is that a federal court has already entered a final judgment declaring Respondents’ detention policy unlawful and has vacated it entirely. This judgment, issued in a nationwide class action of which Petitioner is a member, is binding on the Respondent agencies and directly controls the central legal issue in this case.

(1) **Petitioner is a Member of a Nationwide Class Granted a Final Judgment Declaring Respondents’ Detention Policy Unlawful**

Petitioner’s likelihood of success is not merely substantial; it is nearly certain. The legal authority for Respondents’ threatened arrest and detention—ICE’s July 2025 policy of treating all noncitizens who entered without inspection as “arriving aliens” subject to mandatory detention under 8 U.S.C. § 1225(b)—has already been litigated and invalidated. As detailed in the Petition, Petitioner is a member of the nationwide “Bond Eligible Class” certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025). (Petition ¶¶ 124-126).

On December 18, 2025, the U.S. District Court for the Central District of California entered a Final Judgment in that case which:

- **DECLARED** that all class members, including Petitioner, are subject to discretionary detention under 8 U.S.C. § 1226(a) and are *not* subject to mandatory detention under § 1225(b); and
- **VACATED** the underlying ICE policy, finding it unlawful and “not in accordance with law” under the Administrative Procedure Act (APA). (Petition ¶¶ 124, 128).

A vacated agency policy is a legal nullity. Respondents cannot lawfully threaten to arrest and detain Petitioner based on a policy that a federal court has already rendered void. The *Maldonado Bautista* court entered this final

judgment under Federal Rule of Civil Procedure 54(b) precisely because it was presented with evidence that Respondents were refusing to comply with its prior orders, thereby creating a binding and dispositive adjudication of Petitioner's rights. (Petition ¶¶ 127, 129). As the respondent agencies here are the same parties bound by that judgment, they are precluded from re-litigating the statute's meaning against Petitioner. Continued action based on this vacated policy is, by definition, an act without a legal basis.

(2) The Threatened Arrest is an Ultra Vires Agency Action.

Respondents' threatened arrest of Petitioner is premised on their *ultra vires* interpretation of 8 U.S.C. § 1225(b) as applying to noncitizens apprehended in the interior—an interpretation that directly contradicts the plain language of the INA. Section 1225 governs inspection of "arriving aliens" at the border, while Section 1226 governs the detention of noncitizens like Petitioner who are already present in the United States [10]. Agency action that exceeds its delegated authority is unlawful and must be invalidated. *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998).

(3) Due Process Violations.

Threatening to arrest and subject Petitioner to mandatory, prolonged detention without any individualized assessment of flight risk or dangerousness violates his rights under the Due Process Clause of the Fifth

Amendment. The government's policy strips Petitioner of notice and a meaningful opportunity to be heard before a neutral decision-maker prior to depriving him of his fundamental right to liberty. Such arbitrary governmental action is precisely what the Due Process Clause forbids. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

(4) Administrative Procedure Act (APA) Violations.

The agency policy that forms the basis for Petitioner's threatened arrest is arbitrary and capricious in violation of the APA. Respondents abruptly departed from decades of prior practice—which provided for bond hearings under 8 U.S.C. § 1226(a) for interior apprehensions—without reasoned explanation. This unexplained reversal of long-standing policy constitutes classic arbitrary and capricious action that must be set aside by this Court. In fact, the *Maldonado Bautista* court VACATED the policy, however Respondents continue to act based on this vacated unlawful policy.

(5) The Threatened Action Violates the *Accardi* doctrine.

By threatening to subject Petitioner to mandatory detention under § 1225(b), Respondents are violating the *Accardi* doctrine, which requires them to follow their own established regulations and longstanding practice. For decades, DHS regulations and BIA precedent made clear that noncitizens in Petitioner's situation were “eligible for bond and bond redetermination” under 8 U.S.C. § 1226. See *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). Respondents cannot unilaterally abandon these binding procedural rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

By reclassifying individuals who entered without inspection apprehended in the interior of the United States as “applicants for admission” or as “arriving aliens” subject to mandatory detention under § 1225(b)(2), ICE and EOIR have disregarded the procedural safeguards and discretionary bond provisions outlined in § 1226(a). This interpretation is contrary to the plain language of the INA and disrupts decades of settled law, which recognized the distinct legal status and rights of noncitizens apprehended in the interior. This departure from established regulations and legal standards not only contravenes the statutory framework of the INA but also undermines the procedural rights and protections intended to ensure fair and consistent treatment of noncitizens, warranting immediate judicial

intervention. See *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Dozens of cases from district courts nationwide referenced in the Petition support the Petitioner’s argument that these agency interpretations violate the *Accardi* doctrine, as well as the plain reading and interpretation of the INA and Respondents’ regulations.

(6) 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).

B. Petitioner is Likely to Suffer Irreparable Harm.

The imminent threat of unlawful physical detention is a paradigmatic irreparable injury. The loss of constitutional freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Here, the harm is not speculative but actual and imminent. As documented in the Petition and the referenced declarations from *Make The Road New York et. al., v. Noem et al.*, No. 1:25-cv-00190-JMC (D.D.C.), Respondents have engaged in a nationwide campaign of arresting noncitizens at courthouses to subject them to expedited removal. Petitioner's hearing is scheduled for January 21, 2026, making the threat immediate. If not enjoined, Petitioner is forced into an impossible choice: attend his hearing and be unlawfully arrested, losing his liberty and access to the regular removal process, or fail to appear out of fear and be ordered removed *in absentia*. This is the very definition of irreparable harm.

No amount of monetary damages could remedy the unlawful deprivation of liberty that Respondents threaten. The loss of freedom, separation from his son, and inability to work constitute severe and irreparable harm. If Respondents are permitted to unlawfully arrest Petitioner, he would be detained with hardened criminals despite being neither a flight risk nor a danger to the community. The threat of such an unjust detention is actual and imminent, and only immediate injunctive relief can prevent it. **There is no**

adequate remedy at law to compensate Petitioner for these harms. The only way to prevent ongoing harm is immediate injunctive relief.

C. Balance of Equities.

The balance of equities tips sharply in Petitioner's favor because the catastrophic harm to the Petitioner from a threatened unlawful detention vastly outweighs any harm to the government. Enjoining Respondents from detaining Petitioner under 8 U.S.C. § 1225(b)(2) simply preserves the current status quo of Petitioner's liberty and does not hinder ICE's ability to present evidence to an immigration judge that Petitioner is a flight risk or danger to the community under the correct legal standard of 8 U.S.C. § 1226(a).

Moreover, the government's interest in detaining the Petitioner without due process is minimal compared to the Petitioner's fundamental right to liberty. The government's interest in detention is significantly outweighed by its failure to adhere to established law and procedure; and unnecessary detention wastes valuable financial and administrative resources. Less-restrictive alternatives, such as continued release on recognizance, were available, but were not considered. Granting a TRO would prevent the government from expending resources defending against habeas petitions that could be avoided by following the law (and distinction between Petitioner and an "arriving alien").

By contrast, the threatened arrest and detention would inflict grave,

irreparable harm on Petitioner's liberty, separate him from his family, and disrupt his employment. Enjoining Respondents' use of a legally void detention scheme merely requires them to follow the lawful process Congress created.

D. Public Interest.

The public interest unequivocally aligns with granting the requested relief. It is served not by allowing arbitrary detention, but by upholding constitutional and statutory rights, ensuring due process, and compelling government agencies to adhere to their own established rules and international obligations. The public interest is served by upholding the rule of law and constitutional rights, ensuring that civil detention comports with due process and that government agencies comply with their own regulations, thereby conserving scarce detention resources for those who present genuine danger or flight risk. Arbitrary detention undermines public trust in government and the rule of law. Ensuring that agencies follow their own procedures protects individuals from arbitrary government action and promotes fairness within the legal system. Requiring DHS to seek individualized relief rather than invoking an automatic detention mechanism promotes accurate decision-making and conserves governmental resources.

The public interest favors adherence to lawful, individualized process; conservation of scarce detention resources for individuals who present genuine danger or flight risk; confidence in the legal system; and upholding

fundamental due process protections. Requiring DHS to use those tailored mechanisms—rather than relying on non-merits automatic detention for all—advances the rule of law and efficient resource allocation. As-applied relief here maintains the integrity of the immigration adjudication system without broad disruption.

It should be noted that the third and fourth factors above merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the balance of equities and the public interest tilt sharply in favor of the issuance of a TRO, as the public has a significant stake in the Government's compliance with the law. *See, e.g., League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (“There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.”)

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

removal actions if it does so in compliance with existing laws, regulations, and the U.S. Constitution.

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

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

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

Applying the *Mathews v. Eldridge* test, Petitioner’s liberty interest is paramount. Being free from physical detention “is the most elemental of liberty

interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The threatened detention is based on a categorical—and unlawful—reinterpretation of the INA, not on any individualized assessment that Petitioner is a flight risk or a danger to the community. The risk of erroneous deprivation of liberty is therefore extreme, as the established procedure—an individualized bond hearing under 8 U.S.C. § 1226(a)—is being circumvented entirely. The government's interest in enforcing an unlawful policy is non-existent, while the harm to Petitioner—the loss of his freedom, his job, and contact with his family—is immense.

Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator. *Marcello v. Bonds*, 39 U.S. 302, 305-306 (1955). The risk of erroneous deprivation of liberty is high because as ICE officers and even immigration judges are no longer neutral as they support mandatory detention for everyone in Petitioner's circumstances. The risk of deprivation is high because ICE is violating the agency's own rules, regulations, and the INA under which it operates. Petitioner's right to liberty and to be free from unjustified detention is paramount. In conclusion, all three *Mathews* factors favor Petitioner's position that his procedural due process rights under the Fifth Amendment were violated.

IV. COURT'S AUTHORITY TO PRESERVE THE STATUS QUO

The relief Petitioner seeks is a classic prohibitory injunction, intended to preserve the status quo pending a decision on the merits. The status quo is not the state of affairs at the moment of filing, but the “last uncontested status between the parties which preceded the controversy.” *Stemple v. Bd. of Ed. of Prince George's Cnty.*, 623 F.2d 893, 898 (4th Cir. 1980). In this case, that is Petitioner's current liberty. Respondents' threatened arrest is the action that would disturb the status quo.

Therefore, an injunction preventing this arrest is not a disfavored mandatory injunction but a prohibitory one. Its purpose is to prevent Respondents “from taking action . . . that would prevent the court from rendering a meaningful decision on the merits.” *U.S. v. State of Ala.*, 791 F.2d 1450, 1459 (11th Cir. 1986). Should Respondents arrest Petitioner before this Court can rule, the Court retains the equitable power to issue a mandatory injunction to restore the status quo ante by ordering his release. *See Porter v. Lee*, 328 U.S. 246, 251 (1946) (“[W]here 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.”). But the primary relief sought now is prohibitory: to enjoin an imminent, unlawful deprivation of liberty.

V. PROCEDURAL REQUIREMENTS

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

Security: The Court should waive the Rule 65(c) security requirement or set a nominal bond, as this case vindicates important constitutional rights, seeks as-applied relief against the government, and Respondents face no risk of monetary harm from compliance with constitutional and statutory obligations. Courts in the Fifth Circuit have frequently exercised their discretion to require no bond in cases involving the enforcement of constitutional rights or where the Respondent would not be harmed by the injunction. The Eleventh Circuit aligns itself with the “judicial discretion” standard, which is more flexible and allows for consideration of factors such as the public interest and the absence of risk of monetary harm to the enjoined party. *State of Ala. ex rel. Siegelman v. U.S. E.P.A.*, 925 F.2d 385 (11th Cir. 1991). Furthermore, Petitioner is not a wealthy noncitizen and lacks financial means to pay a TRO bond.

Here, Petitioner seeks only as-applied, non-monetary relief against government actors; and Respondents face no risk of financial loss or damages from compliance with constitutional and statutory obligations. The equities

and public interest strongly support waiver or a nominal bond, as the relief sought is to prevent ongoing unlawful detention and does not expose Respondents to monetary harm.

Additionally, where an action is brought for the enforcement of “public interests” which “are of such gravity and importance as to warrant their enforcement without the usual safeguards for the opposing party,” the court may dispense with the bond requirement. Respondents cannot show that they will suffer any monetary damages, and the public interest in having agencies follow the law and their own regulations and procedures as well as protect constitutional rights does not warrant any security payment in this case.

VI. CONCLUSION

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

For the foregoing reasons, Petitioner respectfully requests that this Court issue a Temporary Restraining Order and/or Preliminary Injunction that: (1) ENJOINS Respondents from arresting or detaining Petitioner under the authority of 8 U.S.C. § 1225(b); (2) DECLARES that any custody determination must proceed under the standards of 8 U.S.C. § 1226(a); (3) alternatively, ORDERS his immediate release if he is detained before the Court can rule; and (4) grants such other relief as is just and proper.

Respectfully submitted this 15th of January, 2026.

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