

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PAVEL LEIVA,

Petitioner,

v.

WARDEN, KROME SERVICE PROCESSING
CENTER, et al,

Respondents.

Case No. 26-cv-20715-RKA

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
MEMORANDUM IN SUPPORT**

The Petitioner, Pavel Leiva, respectfully requests that the Court to issue a temporary restraining order compelling Respondents to release him from custody immediately. The Petitioner also requests that the Court issue a temporary restraining order prohibiting Respondents from removing him from the United States or out of the Southern District of Florida during the pendency of these proceedings.

I. BACKGROUND

Petitioner is a fifty-four-year-old native and citizen of Cuba who was previously a Lawful Permanent Resident of the United States. He was ordered removed on October 20, 2021, after serving prison for a conviction for trafficking in counterfeit devices. He was granted an Order of Supervision (OSUP) after ICE determined that he was neither a flight risk nor a danger to the community. Petitioner has no violent criminal history.

Petitioner complied with all the requirements of his release, including appearing for all scheduled check-ins with ICE officers. Nevertheless, on or about December 30, 2025, during such a routine check-in, ICE revoked Petitioner's OSUP and re-detained him without prior notice, without providing him with the reasons for the revocation or giving him an opportunity to be heard or respond to the revocation. ICE did not identify any violation of the conditions of supervision, any changed circumstances, or any basis to conclude that removal had become reasonably foreseeable.

At his appointment, Petitioner told ICE officers that he had suffered a heart attack previously and had not been feeling well and had put off seeking medical treatment in order to appear for his supervision appointment. He stated that he was feeling chest pains and was concerned; however, the officers accused him of faking his symptoms in order to be released, and placed him in a holding cell.

Petitioner's symptoms worsened, but ICE officers ridiculed him and continued to accuse him of falsifying his symptoms. When Petitioner was finally able to see medical staff, they advised ICE officers that he was suffering a medical emergency, and Petitioner was subsequently hospitalized for several weeks following a heart attack. During his hospitalization, he was antagonized by ICE guards to the point that medical staff felt compelled to intervene.

Following his release from the hospital, Petitioner was detained at the Krome Service Processing Center. He was receiving subpar care including no access to insulin, a lack of care, and a lack of attention to hygienic practices – including failure to change bed linens. **The Petitioner has since been re-hospitalized following medical complications and it is believed that he is currently in Intensive Care. Undersigned counsel has reached out to counsel for the Respondent's in an attempt to get more information regarding the status of the Petitioner.**

II. DISCUSSION

A temporary restraining order is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking a TRO must establish: (1) “that he is likely to succeed on the merits”; (2) “that he is likely to suffer irreparable harm in the absence of preliminary relief”; (3) “that the balance of equities tips in his favor”; and (4) “that an injunction is in the public interest.” *Winter*, 555 U.S. at 20.

The first two factors are “the most critical,” *Nken v. Holder*, 556 U.S. 418, 434, (2009), and “[w]hen the Government is the opposing party, the third and fourth factors merge.” *Id.* at 435.

A. Winter Factor One: Likelihood of Success on the Merits

Petitioner is likely to succeed on the merits of his claim. The Due Process Clause prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law[.]” U.S. Const. Amend. V. This protection extends to “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The rights guaranteed by the Due Process Clause also specifically extend to non-citizens in the context of immigration and removal proceedings. *See Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (“It is well established that the Fifth Amendment entitles [non-citizens] to due process of law’ in the context of removal proceedings.”) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment [...] The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (quoting *Armstrong v. Manzo*, 380 US 545, 552 (1965)). Hence, non-

citizen “detainees are entitled to notice and an opportunity to be heard ‘appropriate to the nature of the case.’” *J. G. G., supra*, 145 S.Ct. at 1006 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). Even when mandatory detention is constitutionally permissible, due process still requires “adequate procedural protections” to ensure that the Government’s purported justification for detaining a non-citizen “outweighs the individually constitutionally protected interest in avoiding physical restraint.” *Zadvydas, supra*, 533 U.S. at 690.

When determining the extent of process that is due and whether an individual was deprived of that process, courts consider three factors: “First, the private interest that will be affected by the official action; second, 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 finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews, supra*, 424 U.S. at 335.

To assess the constitutionality of non-criminal detention, including in the immigration context, the Court assesses and weighs each of these factors to determine if an individual was afforded the appropriate level of procedural due process. See *Hamdi v. Rumsfeld*, 542 U.S. 507, 529-533 (2004) (under *Mathews*, a “citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decisionmaker”); see also *Black v. Decker*, 103 F.4th 133, 147 (2d Cir. 2024) (stating “[m]any courts have applied the *Mathews* factors ... to determine what process is due to noncitizens in removal proceedings”).

A court reviewing whether a non-citizen detainee has received adequate due process first looks to “the private interest that will be affected by the official action.” *Mathews, supra*, 424 U.S. at 335. Petitioner is detained; hence, his private interest is extremely weighty. *Hamdi, supra*, 542 U.S. at 529 (stating that freedom from physical detention “is the most elemental of liberty interests”); see also *Zadvydas, supra*, 533 U.S. at 690 (finding that freedom from government custody “lies at the heart” of due process protections).

Next, the Court considers “the risk of an erroneous deprivation of such interest through the procedures used.” *Mathews, supra*, 424 U.S. at 335. This Circuit has held that the risk of erroneous deprivation is low when the challenged state action follows official standards and procedures. *Watkins v. Israel*, 661 Fed. Appx. 608, 610 (11th Cir. 2016) (citing *Reams v. Irvin*, 561 F.3d 1258, 1264 (11th Cir. 2009)). Hence, the government’s failure to follow procedures implies that the risk of an erroneous deprivation is high.

In addition, because the availability of a judicial forum to challenge the deprivation implies a low risk of erroneous deprivation, *Worthy v. City of Phenix City, Alabama*, 930 F.3d 1206, 1223 (11th Cir. 2019), the absence of an avenue to contest the deprivation indicates a high risk of erroneous deprivation.

In the instant case, Petitioner was not given prior notice or an opportunity to contest his detention. Moreover, the fact that there is no evidence that ICE considered the fact that Petitioner has kept his record clean since being found eligible for release and has “proved he is not a flight risk by attending his reporting to ICE as required” before revoking release indicates that “the risk of erroneous deprivation of that interest is substantial here.” *Perez v. Warden*, No. 2:26-cv-0009-SPC-DNF, .2026 U.S. Dist. LEXIS 9534 at *5-6 (M.D. Fla. Jan. 19. 2026).

Thus, this factor weighs in Petitioner’s favor.

The last *Mathews* step is to consider “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews, supra*, 424 U.S. at 335.

This factor weighs in favor of Petitioner. The government’s interest in re-detaining Petitioner is minimal: the government cannot show that Petitioner is a flight risk, poses a danger to the community, or otherwise needs to be detained pending the resolution of this litigation. Respondents also have not shown that providing additional procedures would impose any burdens on the government.

As all three *Mathews* factors support Petitioner, Petitioner is likely to succeed on the merits of his due process claim. Petitioner has thus satisfied the first *Winter* factor.

B. Winter Factor Two: Irreparable Harm

Petitioner has met his burden of establishing that he will suffer irreparable harm in the absence of a temporary restraining order. “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) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Moreover, courts have recognized that immigration detention in particular can inflict a number of irreparable harms on non-citizens who remain in custody, including economic hardships and negative effects on other aspects of human welfare. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) [“The briefs of amici curiae highlight in more concrete terms the irreparable harms imposed on anyone subject to immigration detention (or other forms of imprisonment). For example, the American Bar Association describes evidence of subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.”].

Finally, Petitioner is at particular risk of irreparable harm because of the risks to his health of continued detention without adequate access to medical care for his diabetes and, more importantly, the heart condition which led to his being hospitalized for almost a month. See Catherine M. Otto, "Heartbeat: delayed and inadequate treatment of acute coronary syndromes during the COVID-19 pandemic." *Heart* (2022), vol 108, pp. 407-409 at 407, <https://heart.bmj.com/content/heartjnl/108/6/407.full.pdf> (accessed February 8, 2026) ["Delayed treatment or suboptimal intervention for acute coronary syndromes is likely to result in long-term detrimental consequences[.]"] Additionally, the Petitioner has been re-hospitalized and undersigned counsel believes he is currently in Intensive Care. Undersigned counsel has reached out for counsel for the Respondents to attempt to obtain additional information regarding his current medical condition, status, and location.

Therefore, Petitioner has satisfied the second *Winter* factor.

C. Winter Factors Three and Four: Balance of Equities and the Public Interest

The final two *Winter* factors are the balance of the equities and consideration of the public interest. As noted *supra*, those factors "merge when the Government is the opposing party." *Nken v. Holder, supra*, 556 U.S. at 435. In the instant case, they weigh in Petitioner's favor. Petitioner has demonstrated serious hardships as a result of his detention, while Respondents have no articulable hardships. The public also has no interest in the detention of chronically ill individuals for non-criminal violations of immigration laws. The balance of equities thus weighs in Petitioner's favor.

Nor is there evidence that issuance of a temporary restraining order would be "averse to the public interest." *Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034 (11th Cir. 2001). Petitioner is not a violent criminal, and is far past the age at which individuals ordinarily

commit violent crimes. See *United States v. Moore*, 851 F.3d 666, 676 (7th Cir. 2017) [“Many violent offenders, moreover, age out of crime, often as early as their mid- to late-twenties.”]. Moreover, the public interest is served by preserving Petitioner’s due process rights. *Torres v. Quinones*, No. 6:26-cv-258-JSS-LHP, 2026 U.S. Dist. LEXIS 20713 at *13-14 (M.D. Fla. Feb. 2, 2026) (citing *Zadvydas, supra*, 533 U.S. at 690; *Mejia v. Noem*, No. 2:25-cv-981-SPC-NPM, 2025 U.S. Dist. LEXIS 217352, at *7, 2025 WL 3078656, at *3 (M.D. Fla. Nov. 4, 2025) (citing *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005), and *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013))); see also *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) [“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”].

Thus, the third and fourth *Winter* factors clearly weigh in favor of Petitioner.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that his Emergency Motion For Temporary Restraining Order be granted.

Dated: February 17, 2026

Respectfully submitted,

/s/ Fairuze Sofia

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 17, 2026, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

/s/ Fairuze Sofia
Fairuze Sofia