

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Henry Enrique **LEIVA MURILLO**,

Petitioner,

v.

Warden, **IMMIGRATION AND CUSTOMS
ENFORCEMENT MIRAMAR SUB OFFICE**;

Miami Field Office Director,
Enforcement and Removal of Operations,
**IMMIGRATION AND CUSTOMS
ENFORCEMENT**

Pamela Bondi, **ATTORNEY GENERAL**;

AND

Kristi Noem, **SECRETARY OF THE
DEPARTMENT OF HOMELAND
SECURITY**,

Respondents.

Case No. 0:26-cv-60456-EA

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

The Petitioner, Henry Enrique Leiva Murillo, respectfully requests that the Court issue a temporary restraining order compelling Respondents to release him from custody immediately and returning the parties to the status quo. 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

The Petitioner, Henry Enrique Leiva Murillo, is a native and citizen of Honduras. The Petitioner was previously removed at the border and reentered the United States twice without inspection. In 2016, the Petitioner married a US Citizen and they proceeded to have two daughters. The relationship became abusive. In 2021, the Petitioner filed an I-360 Self Petition as the abused spouse of a US Citizen pursuant to the provisions of the Violence Against Women Act (VAWA) enacted as Title IV of the Violent Crime Control and Law Enforcement Act of 1994. On December 11, 2024, USCIS granted the Deferred Action, allowing the Petitioner to remain in the United States for a period of fifteen months. *See I-360 Approval Notice and Grant of Deferred Action Exhibit 1*. It is important to note USCIS granted the Petitioner's Deferred Action with full knowledge of his prior removal orders. More pointedly, the grant specifically states that "*USCIS does not anticipate instituting action for removal at this time*" and that the grant will remain in effect **"unless terminated earlier by USCIS for reasonable cause and upon appropriate notice."** *See Exhibit 1*. Subsequent to USCIS granting the Petitioner's Deferred Action, the Petitioner traveled outside of the United States with a grant of advanced parole. His last entry into the United States was lawful as he was paroled into the country by Customs and Border Patrol. The Petitioner has no criminal history aside from minor traffic infractions.

On August 19, 2025, the Petitioner filed for divorce from his abusive spouse, despite multiple good faith attempts to reconcile. The divorce proceedings have been highly contentious and provide credible evidence supporting the Petitioner's allegations of abuse. The abusive spouse's vindictive actions are the impetus to the Petitioner's detention as she reported the Petitioner to Immigration and Customs Enforcement ("ICE"). Acting on information relayed from the Petitioner's abusive spouse, ICE arrested and detained the Petitioner despite no material change in circumstances and without prior notice. 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. The Petitioner was transported to the ICE Enforcement and Removal Operations sub station in Miramar, Florida. He has subsequently been transferred to the Florida South Side Facility (Alligator Alcatraz) where he is being unlawfully detained to date. At the time of his arrest the Petitioner contacted undersigned counsel, who then requested to speak with the nearest ICE officer. The officer refused to come to the phone and blatantly disregarded the Petitioner's attempt to prove his lawful status. Undersigned counsel emailed James Cherenfant, a supervisory officer at the Miramar Substation, a copy of the grant of deferred action and explained the situation on February 18, 2026. To date, there has been no response of acknowledgement of this correspondence. *See Email as Exhibit 2*. Due to the unlawful actions by ICE, undersigned is requesting an Emergency Temporary Restraining Order.

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. USCIS did not notify him of their intention to revoke his deferred action. Moreover, the fact that there is no evidence that ICE considered the Petitioner's grant of deferred action, lack of criminal history, and the reason he came to their attention.

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, the Petitioner faces a substantial and particularized risk of irreparable harm due to the significant likelihood of ICE attempting to reinstate his prior removal order and remove him without any due process. Additionally, he faces prolonged separation and alienation from his minor daughters. The abusive spouse’s deliberate efforts to deny the Petitioner access to his children should not be permitted to succeed through circumstances created by his unlawful detention. Likewise, ICE should not evade accountability for its unlawful detention of an individual who has been granted permission to remain in the United States. Granting the Respondents’ request for removal would not only inflict irreparable harm upon the Petitioner and his children, but would also effectively sanction and incentivize the continued unlawful detention of individuals who possess legal status.

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."].

Additionally, the public interest is served by protecting the rights of victims of interfamily abuse. The public interest is **not** served by allowing abusers to use the legal system and immigration officials to inflict more abuse on their family members.

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 24, 2026

Respectfully submitted,

/s/ Fairuze Sofia

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CERTIFICATION OF EMERGENCY

I hereby certify that, as a member of the Bar of this Court, I have carefully examined this matter and it is a true emergency.

I further certify that the necessity for this emergency hearing has not been caused by a lack of due diligence on my part, but has been brought about only by the circumstances of this case. The issues presented by this matter have not been submitted to the Judge assigned to this case or any other Judge or Magistrate Judge of the Southern District of Florida prior hereto.

I further certify that I have made a bona fide effort to resolve this matter without the necessity of emergency action.

/s/ Fairuze Sofia

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Henry Enrique Leiva Murillo

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 24, 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