

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**TUMAINE UTOLITI,**

*Petitioner,*

v.

**DAWN CEJA**, in her official capacity as warden of  
the Aurora Contract Detention Facility;

**ROBERT GUADIAN**, in his official capacity as  
Field Office Director, Denver, U.S. Immigration and  
Customs Enforcement;

**BENJAMINE HUFFMAN**, in his official capacity  
as Acting Secretary, U.S. Department of Homeland  
Security;

**CALEB VITELLO**, in his official capacity as  
Acting Director of Immigration and Customs  
Enforcement;

**JAMES MCHENRY**, in his official capacity as  
Acting Attorney General of the United States,

*Respondents.*

**Case No. 1:25-cv-00418**

**MOTION FOR TEMPORARY  
RESTRAINING ORDER**

**INTRODUCTION**

It is well settled in this District that the government cannot indefinitely detain noncitizens while they wait years for their immigration case to be resolved without so much as a hearing to determine whether such detention is justified or necessary. *See, e.g., Martinez v. Ceja*, No. 24-CV-03056-PAB, 2024 WL 5168143, at \*7 (D. Colo. Dec. 19, 2024); *de Zarate v. Choate*, 23-cv-571-PAB, 2023 WL 2574370 (D. Colo. Mar. 20, 2023); *Daley v. Choate*, 22-cv-03043-RM; 2023 WL 2336052 (D. Colo. Jan. 6, 2023); *Viruel Arias v. Choate*, 22-cv-2238-CNS, 2022 WL 4467245 (D.

Colo. Sept. 26, 2022); *Sheikh v. Choate*, 22-cv-1627-RMR, 2022 WL 17075894 (D. Colo. July 27, 2022); *Singh v. Garland*, 21-cv-0715-CMA, 2021 WL 2290712 (D. Colo. June 4, 2021); *Singh v. Choate*, 19-cv-0909-KLM, 2019 WL 3943960 (D. Colo. Aug. 21, 2019); *see also Son Vo v. Greene*, 109 F. Supp. 2d 1281 (D. Colo. 2000); *Gonzalez-Portillo v. Reno*, 2000 WL 33191534 (D. Colo. Dec. 20, 2000); *Martinez v. Greene*, 28 F. Supp. 2d 1275 (D. Colo. 1998). And yet that is precisely what has happened to Tumaine Utoliti (“Mr. Utoliti”), a stateless man who experiences serious mental illnesses stemming from trauma he experienced growing up in a refugee camp and who has been detained in conditions tantamount to penal confinement for 21 months – 664 days – with no end to his detention in sight.

Mr. Utoliti moves for a temporary restraining order and preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65 against Dawn Ceja, in her official capacity as Warden of the Aurora Contract Detention Facility (“Aurora facility”)<sup>1</sup>; Robert Guadian, in his official capacity as Denver Immigration and Customs Enforcement (“ICE”) Acting Field Office Director; Benjamine Huffman, in his official capacity as Acting Secretary of the U.S. Department of Homeland Security (“DHS”); Caleb Vitello, as Acting Director of ICE; and James McHenry, in his official capacity as the Acting Attorney General of the U.S. Department of Justice. In the alternative, should the Court deny Mr. Utoliti’s request for injunctive relief, at a minimum it should order Respondents to show cause within seven days establishing why Mr. Utoliti’s habeas petition should not be granted. Counsel for Mr. Utoliti provided notice of his intent to file the accompanying habeas petition to

---

<sup>1</sup> The Aurora facility is owned and operated by GEO Group, Inc., a private for-profit corporation. It is also referred to as the Denver Contract Detention Facility. These names are used interchangeably by the Department of Homeland Security (DHS), and both refer to the facility located at 3130 N. Oakland Street, Aurora, Colorado.

counsel for Respondents at the U.S. Attorney's Office for the District of Colorado on February 5, 2025.

### **FACTUAL BACKGROUND**

Mr. Utoliti is a stateless, 25-year-old man who was born and raised in a Ugandan refugee camp to Congolese parents. His parents fled the Democratic Republic of Congo in 1996 and have since lost communication with family in the region. Exh. A at ¶ 12. Mr. Utoliti spent most of his childhood and adolescence moving through life precariously as a refugee. *Id.* As a child, he faced severe violence and abuse by Ugandan law enforcement, including rape, beatings, arbitrary detentions, and extortion. *Id.*; Exh. B at 13. At the age of seventeen, he escaped this persecution when he was admitted to the United States as refugee. *Id.* On January 31, 2019, Mr. Utoliti was granted lawful permanent residence. *See* Exh. B at 7.

On December 9, 2020, Mr. Utoliti was charged with two counts of aggravated assault, in violation of Arizona Revised Statutes §§ 13-1203 and 13-1204, and one count of attempting to elude a law enforcement officer, in violation of A.R.S. § 28-622.01 A.R. 472-478. *See* Exh. B at 6; Exh. F.

He pled guilty to the following amended charges: one count, as amended, of attempt to commit aggravated assault on law enforcement, under A.R.S. § 13-1304(a)(2) and one count of unlawful flight from a law enforcement vehicle under A.R.S. § 28-622.01, with amended designations of both offenses as non-dangerous and non-repetitive. Exh. F. This is Mr. Utoliti's sole criminal conviction. *Id.*

On March 29, 2021, Mr. Utoliti was sentenced to three years probation. Exh. A at ¶ 22. The sentencing court noted specifically that Mr. Utoliti's offense was "non dangerous." Exh. F at 1. Following a probation violation, in which Mr. Utoliti, unable to fully understand the terms of his

probation due to a language barrier, left the state despite being prohibited from doing so, the state court reinstated probation for three years and ordered four months in jail. Exh. A at ¶ 22.

On April 15, 2023, the Department of Homeland Security (DHS) served Mr. Utoliti with a Notice to Appear, charging him with removability for a conviction of a crime involving moral turpitude committed within five years of entry under 8 U.S.C. § 1227(a)(2)(A)(i). On May 17, 2023, an Immigration Judge denied Mr. Utoliti's first request for bond, finding that he was subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). Mr. Utoliti, *pro se*, did not appeal the decision.

On June 9, 2023, Mr. Utoliti appeared *pro se* before the Florence Immigration Court in Arizona and testified in support of his applications for relief. Exh. B. At the end of the hearing, the immigration judge concluded that Mr. Utoliti's assault conviction constituted an aggravated felony conviction, crime involving moral turpitude, and a particularly serious crime, which rendered him ineligible for asylum and withholding of removal. *Id.* The immigration judge denied Mr. Utoliti's claims for asylum, withholding of removal, and relief under the Convention Against Torture, and ordered him removed to Uganda, or in the alternative, the Democratic Republic of the Congo. *Id.*

On June 10, 2023, Mr. Utoliti filed a *pro se* Notice of Appeal with the Board of Immigration Appeals (BIA). He subsequently obtained *pro bono* legal counsel to support him in his appeal to the BIA. However, on appeal, Mr. Utoliti's attorney failed to challenge the immigration judge's finding that Mr. Utoliti's assault conviction constituted an aggravated felony, a crime involving moral turpitude, or a particularly serious crime. *See generally* Exh. D.

On September 21, 2023, the BIA affirmed the immigration judge's decision. Exh. C. On October 13, 2023, Mr. Utoliti filed a *pro se* petition for review before the Ninth Circuit. *Utoliti v. Garland*, Case No. 23-2767 (9th Cir. 2023). On January 19, 2024, the Ninth Circuit granted Mr.

Utoliti's motion for a stay of removal, finding that Mr. Utoliti satisfied his burden of demonstrating that a stay is warranted, including demonstrating a likelihood of success on the merits. *Id.* at Dkt. 12 (citing *Nken v. Holder*, 556 U.S. 418 (2009)). The Ninth Circuit also granted a motion for reappointment of *pro bono* counsel, and appointed the Santa Clara Legal Clinic (SCLA) to represent Mr. Utoliti. *Id.*

While his case was pending before the Ninth Circuit, Mr. Utoliti once again sought bond *pro se*. Exh. G at 15. On March 19, 2024, an immigration judge denied bond, finding that, because Mr. Utoliti has a conviction designated to be an aggravated felony, he is subject to mandatory detention under § 1226(c) and the immigration judge lacked jurisdiction to consider bond in his case. *Id.* at 4-6. After finding that the court lacked jurisdiction, the immigration judge noted briefly in the alternative that, if Mr. Utoliti were eligible, the court would nonetheless deny bond based on Mr. Utoliti's criminal history. *Id.*

Mr. Utoliti filed a *pro se* bond appeal to the BIA. On June 13, 2024, the BIA affirmed the immigration judge's decision solely on the basis that "authority does not exist to reconsider" his custody status because he is subject to mandatory detention under § 1226(c). Exh. G. The BIA did not address the immigration judge's alternative finding because it affirmed the determination that Mr. Utoliti is statutorily ineligible for bond. *Id.*

On April 19, 2024, SCLA filed an opening brief raising numerous challenges that private counsel had not presented to the BIA, including the critical, threshold issues that Mr. Utoliti is not removable as charged and that the immigration judge erred in finding that his conviction constituted an aggravated felony, a crime involving moral turpitude, and a particularly serious crime. Exh. D.

These arguments impact the very basis for Mr. Utoliti's removal proceedings, as well as his mandatory detention under 8 U.S.C. § 1226(c).

On June 3, 2024, the government filed its answering brief, alleging that the Ninth Circuit could not consider the above arguments because they had not been exhausted before the BIA. *Utoliti v. Garland*, Case No. 23-2767, Dkt. 26 (9th Cir. 2023).

To redress this issue, on July 22, 2024, Mr. Utoliti filed a motion to reopen before the BIA with the assistance of the Florence Immigrant & Refugee Rights Project. This motion raised a claim of ineffective assistance of counsel for failing to contest the immigration court's erroneous findings regarding Mr. Utoliti's conviction and charge of removability, and sought to reopen his case to present those critical arguments.

On September 30, 2024, the Board issued a decision denying the motion to reopen. On October 1, 2024, Mr. Utoliti filed a second petition for review appealing the BIA's denial of the motion to reopen. *Utoliti v. Garland*, Case No. 24-5970 (9th Cir. 2024). On October 8, 2024, the Ninth Circuit consolidated Mr. Utoliti's two petitions for review, which remain pending as of the date of this filing. Exh. G. The Ninth Circuit set a briefing schedule for spring 2025 and will hear oral arguments on the consolidated petitions in October 2025. *Id.*

To date, Mr. Utoliti has been detained by DHS for over 21 months.<sup>2</sup> According to GEO Medical Reports, Mr. Utoliti is diagnosed with depression, post-traumatic stress disorder (PTSD), and anxiety. Exh. A at ¶¶ 35-36. Prior to detention, he had not seen a mental health provider and his

---

<sup>2</sup> Mr. Utoliti's current detention has already far exceeded the jail time imposed in his criminal proceedings. After his probation violation, he was sentenced to only four months of jail time in 2022. He has now been detained in immigration custody over 21 months, a duration more than 5 times his criminal sentence.

conditions were unidentified and untreated. *Id.* Mr. Utoliti reports that detention has caused his mental health to deteriorate significantly. *Id.* at ¶ 10. He experiences the following symptoms regularly: “nightmares, sweating, tunnel vision, flashbacks, hyperarousal, diminished mood, and feeling extreme nervousness.” *Id.* at ¶ 35. He was medicated to treat his symptoms, which initially provided some relief, though the benefits have diminished the longer he remains detained. *Id.* at ¶ 36. Mr. Utoliti described his experience, stating, “I now wake up feeling the same... it is the routine of being here that negatively affects me.” *Id.* Mr. Utoliti’s social worker identified that he “would benefit from access to culturally competent therapy to help him navigate how to cope with the symptoms of his depression and PTSD diagnoses.” *Id.* at ¶ 45.

Mr. Utoliti’s struggle with mental health in detention has been exacerbated by the sudden loss of his brother, who tragically died by suicide in 2023 while Mr. Utoliti was detained. Exh. A at ¶¶ 3-9. The loss has been particularly difficult for him; he describes himself as living in a “zombie-like” state, made worse by ICE’s refusal to allow him to attend his brother’s funeral and fulfill the cultural ritual of placing a rock on his brother’s tombstone. *Id.* This ritual holds profound significance in Ugandan culture, symbolizing the preservation of familial peace and the proper honoring of the deceased. *Id.* Failing to observe such practices can lead to severe psychological distress, often conceptualized as “unrest” or visitations from the deceased. *Id.* For someone unable to complete these rituals, their grief may manifest in culturally specific symptoms such as visions of the deceased – an expression that must be understood through a culturally competent lens as a legitimate form of spiritual and psychological distress. Exh. A at ¶¶ 3-9. Mr. Utoliti reports experiencing disassociation and numbing following the loss of his brother as well as hallucinations where he sees intrusive images of his brother. *Id.* at ¶ 7.

While detained, Mr. Utoliti has also faced severe risk to his safety. Exh. A at ¶ 32. He has been physically assaulted on two separate occasions that resulted in placement within restrictive housing units. *Id.* During his detention in Arizona, he was assaulted by an individual who was detained with him. *Id.*

After Mr. Utoliti was transferred to Aurora, he was assaulted again by another individual, suffering ten blows to the head. Exh. A at ¶ 32; Exh. H at 4-5. Due to the severity of the attack, Mr. Utoliti was transported to a hospital where he was treated for a facial contusion and soft tissue injuries. *Id.* Mr. Utoliti reports that he is afraid that he will experience further violence by other detained individuals in the future, and this fear reminds him of the way he felt growing up in refugee camps in Uganda. *Id.* at ¶ 34. He feels unsafe each day that he is detained, which further exacerbates his PTSD symptoms and the harm he experiences due to his continued confinement. *Id.*

Mr. Utoliti's prolonged detention – now exceeding 664 days – without an individualized bond hearing is unconstitutional. As detailed in Mr. Utoliti's contemporaneously filed Petition for Writ of Habeas Corpus, he seeks judicial review of his continued unlawful detention. He is likely to succeed on the merits of his petition. Mr. Utoliti requests this Court order his immediate release or, in the alternative, that he be presented before a neutral adjudicator within seven days of this Court's order to determine whether his continued detention serves a legitimate purpose.

#### **LEGAL STANDARD**

Federal Rule of Civil Procedure 65 authorizes courts to enter preliminary injunctions and issue temporary restraining orders (TRO). Fed. R. Civ. P. 65(a), (b). The Court exercises its discretion when deciding whether to issue a TRO. *Allen W. Hinkel Dry Goods Co. v. Wichison Indus. Gas Co.*, 64 F.2d 881, 884 (10th Cir. 1933); *see also* 11A Charles Alan Wright & Arthur R. Miller, *Federal*

*Practice and Procedure* § 2951 (3d ed. 2023) (“The issuance of a temporary restraining order is a matter that lies within the discretion of the district court.”). The procedure and standards for determining whether to issue a TRO mirror those for a preliminary injunction. *See Emmis Commc’ns Corp. v. Media Strategies, Inc.*, 2001 WL 111229 at \*2 (D. Colo. Jan. 23, 2001) (citation omitted).

A party seeking a TRO and preliminary injunction must show that: (i) they will suffer irreparable harm unless the injunction is issued; (ii) they have a substantial likelihood of prevailing on the merits; (iii) the threatened injury outweighs any harm that the preliminary injunction may cause the opposing party; and (iv) the injunction will not adversely affect the public interest. *Diné Citizens Against Ruining Our Env’t v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). Of the four factors, “a showing of probable irreparable harm is the single most important prerequisite” for a preliminary injunction or temporary restraining order, and “the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered.” *Dominion Video Satellite v. EchoStar Satellite Corp.*, 356 F.3d 1256, 1260–61 (10th Cir. 2004) (quotation and citation omitted).

Numerous district courts have granted temporary restraining orders to compel bond hearings in noncitizen habeas cases. *See, e.g., Pham v. Becerra*, 2023 WL 2744397 (N.D. Cal. Mar. 31, 2023); *Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005 (C.D. Cal. 2020); *Durel B. v. Decker*, 455 F. Supp. 3d 99 (D.N.J. 2020); *Diaz Calderon v. Barr*, 2020 WL 5645191 (E.D. Mich. Sept. 22, 2020). These courts, applying the traditional test for injunctive relief discussed more fully below, have found that granting a temporary restraining order requiring a bond hearing is an appropriate remedy for due process violations such as the one in Mr. Utoliti’s case.

The Court likewise has independent authority under the habeas corpus statute, 28 U.S.C. §

2241, to order the immediate release of detained persons from unconstitutional confinement. *See, e.g., Boutwell v. Keating*, 399 F.3d 1203, 1208-09 (10th Cir. 2005) (when an imprisoned person “is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release ... his sole federal remedy is a writ of habeas corpus”) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)).

**I. Mr. Utoliti Will Suffer Irreparable Harm in the Absence of a Temporary Restraining Order.**

Mr. Utoliti suffers great, immediate, and irreparable harm each day he remains detained without a constitutionally adequate bond hearing from a neutral adjudicator who assesses whether his continued confinement is necessary. The harm suffered is imminent and ongoing; it is “certain, great, and not theoretical.” *Heidman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). “Irreparable harm, as the name suggests, is harm that cannot be undone, such as by an award of compensatory damages or otherwise.” *Salt Lake Tribune Publ’g Co., LLC v. AT&T Corp.*, 320 F.3d 1081, 1105 (10th Cir. 2003).

The violation of an individual’s constitutional rights is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976). Indeed, “[m]ost courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.” *Free the Nipple—Fort Collins*, 916 F.3d at 805–06 (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012)); *Connecticut Dept. of Environmental Protection v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) (“[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury”) (internal quotations and citations omitted).

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It

often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs.” *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); *see also Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (“[t]he deprivation [...] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others outside normal visiting hours. The use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone”); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing in “concrete terms the irreparable harms imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on [persons in detention] and their families as a result of detention, and the collateral harms to children of [persons in detention] whose parents are detained”).

Underscoring this harm, the government itself has documented alarmingly poor conditions in ICE detention centers.<sup>3</sup> Nevertheless, years after the Inspector General’s report revealing systemic mistreatment, individuals like Mr. Utoliti continue to suffer in ICE custody. For nearly a decade, immigrants detained at the Aurora facility have raised the alarm about oppressive and unsafe conditions, including substandard medical and mental health care, medical neglect, failures to comply with agency standards, reports of excessive use of force, retaliation against First

---

<sup>3</sup> *See, e.g.*, DHS, Office of Inspector General (“OIG”), *DHS OIG Inspector Cites Concerns with [Noncitizen] Treatment and Care at ICE Detention Facilities* (2017) (reporting instances of invasive procedures and substandard care; mistreatment, such as indiscriminate strip searches; long waits for medical care and hygiene products; expired, moldy and spoiled food; and detained persons being held in administrative segregation for extended periods without documented, periodic reviews required to justify continued segregation) *available at*: <https://www.oig.dhs.gov/news/press-releases/2017/12142017/dhs-oig-inspection-citesconcerns-detainee-treatment-and-care>.

Amendment protected speech, and claims related to wage violations and forced labor.<sup>4</sup> Respondents are on notice of the inadequate medical and mental health care available at the Aurora facility and yet they fail to mitigate the violations of ICE's own detention standards.<sup>5</sup>

---

<sup>4</sup> See e.g., Rocky Mountain Immigrant Advocacy Network (RMIAN), National Immigration Project (NIP), American Immigration Council (AIC), "Complaint Detailing Abusive Overuse of Solitary Confinement and Mistreatment that Disproportionately Impacts Persons with Disabilities at the Aurora Contract Detention Facility," July 13, 2023, *available at*: <https://static1.squarespace.com/static/57f6bd842e69cf55d8158641/t/64b04e1c58a77f267f9c274a/1689275933856/Solitary+Confinement+Complaint+-+FINAL+7.13.23.pdf> (last accessed Dec. 18, 2023); AIC, RMIAN, Immigrant Justice Idaho (IJI), Mariposa Legal, "Violations of ICE COVID-19 Guidance, PBNDS 2011, and Rehabilitation Act of 1973 at the Denver Contract Detention Facility," (Feb. 2022), *available at*: [https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint\\_against\\_ice\\_medical\\_neglect\\_people\\_sick\\_covid\\_19\\_colorado\\_facility\\_complaint1.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_medical_neglect_people_sick_covid_19_colorado_facility_complaint1.pdf) [hereinafter AIC 2022 Complaint]; AIC, IJI, Immigration Equality, "Complaint re: Racial Discrimination, Excessive Use of Force at the Denver Contract Detention Facility," (March 24, 2022), *available at*: [https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint\\_against\\_ice\\_racial\\_discrimination\\_excessive\\_force\\_colorado.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_racial_discrimination_excessive_force_colorado.pdf); Order, *Menocal, et al., v. GEO Group, Inc.*, No. 1:14-cv-02887-JLK-MEH, ECF 380 at 40-41 (Oct. 18, 2022) ("GEO went beyond its contract with ICE in requiring detainees to clean up all common areas and after other detainees under the threat of segregation."); ACLU of Colorado, "Cashing in on Cruelty: Stories of death, abuse, and neglect at the GEO immigration detention facility in Aurora," (2019), *available at*: [https://www.aclu-co.org/sites/default/files/ACLU\\_CO\\_Cashing\\_In\\_On\\_Cruelty\\_09-17-19.pdf](https://www.aclu-co.org/sites/default/files/ACLU_CO_Cashing_In_On_Cruelty_09-17-19.pdf) [hereinafter ACLU Report] (reporting on substandard medical and mental health care at the Aurora Detention Facility); AILA, "Complaint Filed with DHS Oversight Bodies Calls for Improvement to Medical and Mental Health Care of Immigrants in Aurora Detention Center," June 4, 2018, *available at*: <https://www.aila.org/advo-media/press-releases/2018/complaint-filed-with-dhs-oversight-bodies-calls> ("The complaint illustrates the government's failure to comply with official policies on mandated care; grossly substandard medical and mental health care; limited transparency and public accountability regarding many other aspects of detainee care; and facility staff and ICE's deliberate indifference to a detainee's serious medical needs.").

<sup>5</sup> See AIC 2022 Complaint, "Re: Violations of ICE COVID-19 Guidance, PBNDS 2011, and Rehabilitation Act of 1973 at the Denver Contract Detention Facility," (Feb. 11, 2022) *available at*: [https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint\\_against\\_ice\\_medical\\_neglect\\_people\\_sick\\_covid\\_19\\_colorado\\_facility\\_complaint1.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_medical_neglect_people_sick_covid_19_colorado_facility_complaint1.pdf); AIC/AILA 2019 Complaint, "Supplement—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility," (Jun. 11, 2019) *available at*: [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_supplement\\_failure\\_to\\_provide\\_adequate\\_medical\\_and\\_mental\\_health\\_care.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf); AIC/AILA 2018

Mr. Utoliti has already suffered significant physical and psychological harm in immigration detention. *See generally* Exh. A at ¶¶ 30-37. Mr. Utoliti has faced physical harm while in detention. *Id.* at ¶ 32. He has been assaulted twice by individuals while detained. *Id.* More recently, he was repeatedly struck in the head by another detained individual at Aurora, resulting in injuries that required hospitalization. *Id.* Medical evaluations confirmed contusions on his face and soft tissue damage, highlighting the dangerous environment in which he has been forced to live for over 8 months. *Id.*

In addition to physical harm, Mr. Utoliti is diagnosed with PTSD and depression, and his indefinitely protracted incarceration has resulted in “exacerbated mental health symptoms” that manifest in the form of “nightmares, sweating, tunnel vision, flashbacks, hyperarousal, diminished mood, and feeling extreme nervousness.” Exh. A at ¶¶ 30, 35. Although he is currently medicated, the symptoms of his depression, anxiety, and PTSD are not controlled. *Id.* at ¶ 36. He is not currently receiving culturally competent therapy, which would aid in his health management. *Id.* at ¶ 45. The lack of effective mental health treatment has compounded his suffering, leaving him in a vulnerable and deteriorating state.

The psychological toll of his detention has been further magnified by the sudden loss of his brother to suicide. Exh. A at ¶¶ 3-9. Mr. Utoliti was unable to attend his brother’s funeral or participate in culturally significant grieving rituals, such as placing a rock on his tombstones. *Id.* at ¶ 7. These rituals, which are central to Ugandan culture, are essential for processing grief and

---

Complaint, “Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility,” (Jun. 4, 2018) *available at*:  
[https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_demands\\_investigation\\_into\\_inadequate\\_medical\\_and\\_mental\\_health\\_care\\_condition\\_in\\_im](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_im)

maintaining spiritual and familial peace. Mr. Utoliti's inability to grieve with his family has caused him immense psychological distress. *Id.* ¶ at 8.

Each day of continued detention poses an immediate and irreversible threat to Mr. Utoliti's mental, emotional, and physical wellbeing. And absent this Court's intervention, Mr. Utoliti will remain detained indefinitely without ever receiving a constitutionally adequate bond hearing to determine whether his detention is justified or necessary. Thus, Mr. Utoliti has demonstrated that he will be irreparably harmed by his continued detention in substandard conditions without an individualized bond hearing in violation of his constitutional right to due process.

## **II. Mr. Utoliti Has a Substantial Likelihood of Success on the Merits of His Underlying Petition.**

When assessing this prong of the test, the appropriate standard is a "reasonable likelihood" of success and nothing more. *Diné Citizens Against Ruining Our Environment*, 839 F.3d at 1282; *e.g. Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc) (internal quotation marks omitted) ("[L]ikelihood of success on the merits" means that a plaintiff has "a reasonable chance, or probability, of winning . . . A likelihood does not mean more likely than not.").

Here, Mr. Utoliti's claim is likely to succeed because his continued detention without an individualized bond hearing contravenes due process and because the circumstances of his case are even more egregious than similar cases in which this Court has granted relief. The District of Colorado applies a six-factor test when analyzing whether a noncitizen's detention has become unconstitutionally prolonged. Those factors include:

- (1) the total length of detention to date;
- (2) the likely duration of future detention;
- (3) the conditions of confinement;

- (4) delays in the removal proceedings caused by the person in immigration custody;
- (5) delays in the removal proceedings caused by the government; and
- (6) the likelihood that removal proceedings will result in a final order of removal.

*Martinez*, 2024 WL 5168143, at \*5; *de Zarate*, 2023 WL 2574370; *Daley*, 2023 WL 2336052; *Viruel Arias*, 2022 WL 4467245, at \*2; *Sheikh*, 2022 WL 17075894, at \*3; *Singh*, 2021 WL 2290172, at \*4; *Villaescusa-Rios v. Choate*, 2021 WL 269766, at \*3 (D. Colo. 2021); *Singh*, 2019 WL 3943960, at \*5.

First, ICE has already detained Mr. Utoliti for over 21 months, a considerably longer period than other cases in which this Court has granted habeas relief. *See, e.g., Daley*, 2023 WL 2336052 (fourteen months); *Viruel Arias*, 2022 WL 4467245, at \*2 (fourteen months); *Sheikh*, 2022 WL 17075894, at \*3 (thirteen months).

Second, Mr. Utoliti is likely to succeed on the merits of his already-prolonged detention is certain to continue for many months, if not years, while the Ninth Circuit adjudicates his case, as well as any further remands to the immigration judge or appeals. In analogous cases, this Court has found that this factor weighed in favor of the petitioner. For example, in *Villaescusa-Rios*, 2021 WL 269766 at \*3, this Court wrote that, “Courts examine the anticipated duration of all removal proceedings—including administrative and judicial appeals—when estimating how long detention will last. . . . There is a significant probability that [the petitioner’s] detention will continue both during the pendency [of] DHS’s appeal before the BIA and throughout the course of a judicial appeal by either side. Therefore, his detention will definitely terminate at some point, but that point is likely to be many months or even years from now.” (internal citations and quotation marks omitted). The Ninth Circuit has announced that it will hear argument on Mr. Utoliti’s petitions in October 2025. Exh. E. Thus, absent this Court’s intervention, Mr. Utoliti is certain to remain detained *at least* an

additional 10 months, not counting however long it takes for the Ninth Circuit to issue a decision in his case and any subsequent proceedings before the Agency.

Third, this Court has already held that the location of Mr. Utoliti's incarceration weighs in his favor because it is akin to a penal institution; thus, he is likely to succeed on this factor as well. *Martinez*, 2024 WL 5168143, at \*5 ("... the Aurora facility is more akin to incarceration than a civil confinement."); *Daley*, 2023 WL 2336052 at \*4 (detailing poor conditions at the Aurora facility and noting that Respondents did not dispute these conditions); *Viruel Arias*, 2022 WL 4467245 at \*2 (determining Respondents provided insufficient evidence "to explain how the conditions of [petitioner's] confinement differ from the conditions of penal confinement"); *Sheikh*, 2022 WL 17075894 at \*4 (same); *Singh*, 2021 WL 2290712 at \*3–4 (same); *Villaescusa-Rios*, 2021 WL 269766 at \*4 (determining that "conditions of Petitioner's confinement weigh strongly in favor of a bond hearing").

Next, Mr. Utoliti is likely to succeed on the merits of his petition because he has diligently litigated his case and has not engaged in dilatory tactics. Mr. Utoliti cannot be prejudiced by exercising his rights to non-frivolously litigate his case and ensure his proceedings are fundamentally fair. *Villaescusa-Rios*, 2021 WL 269766, at \*4; *Singh*, 2019 WL 3943960 at \*6; *see also German Santos*, 965 F.3d at 211 (noting that doing so would "effectively punish" a petitioner for "pursuing applicable legal remedies") (cleaned up); *Martinez*, 2024 WL 5168143, at \*6 (D. Colo. Dec. 19, 2024) ("[T]he Court will not hold [Petitioner's] efforts to seek relief through the available legal channels against him.").<sup>6</sup>

---

<sup>6</sup> Regarding the fifth factor, counsel is not aware of any unreasonable delays caused by the government in this case.

While *pro se* before the immigration court, Mr. Utoliti promptly filed his application for fear-based immigration relief. On appeal, however, he suffered ineffective assistance of appellate counsel. *See generally* Exh. D. Mr. Utoliti has a colorable defense to removal that has never been fully presented in immigration court due to appellate counsel's failure to present claims critical to his case. *Id.* Despite this setback, Mr. Utoliti has persistently and in good faith challenged his removal, including filing a motion to reopen based on ineffective assistance of counsel and pursuing appeals before the Ninth Circuit. At all times, Mr. Utoliti acted diligently to comply with procedural requirements.

Finally, Mr. Utoliti's ultimate removal from the United States is unlikely. Mr. Utoliti has a strong chance of receiving relief from removal in the form of termination of his removal proceedings, or alternatively asylum, withholding of removal or protection under the Convention Against Torture. As argued before the Ninth Circuit and in the motion to reopen, Mr. Utoliti's removal order is legally defective and invalid. *See* Exh. D.; *see Anderson v. Holder*, 673 F.3d 1089, 1094 (9th Cir. 2012) (holding that a putative removal order was *ultra vires* "because the IJ terminated proceedings after finding that Anderson had presented sufficient evidence of his citizenship to prevent the INS from establishing alienage, the *IJ never actually found that Anderson was removable*") (emphasis added). Second, the immigration judge erroneously held that Mr. Utoliti was convicted of an aggravated felony crime of violence under 8 U.S.C. § 1101(a)(43)(F) and a crime involving moral turpitude under 8 U.S.C. § 1227. *Id.* On these findings, the immigration judge erroneously concluded that Mr. Utoliti is statutorily barred from asylum and withholding of removal. *Id.* There are several issues with this threshold finding, most importantly that Mr. Utoliti was *not* sentenced to a "term of imprisonment of at least a year" as is required under 8 U.S.C. § 1101(a)(43)(F). *Id.* Mr. Utoliti was

sentenced to 121 days imprisonment and 3 years' probation. *Id.* However, because Mr. Utoliti was *pro se* before the immigration judge, and later represented by ineffective appellate counsel, this critical error – which erroneously foreclosed his eligibility for asylum and withholding for removal – has never been fully addressed by the immigration court. *Id.*

Further, Mr. Utoliti has established eligibility for protection under the Convention Against Torture. Exh. D at 42-67. He faced torture in the form of physical beatings and rape by government officials. *Id.* Furthermore, Mr. Utoliti's claims have never been fully addressed on the merits because of a threshold decision regarding his eligibility for relief, which is erroneous on its face. *Id.* This error was further compounded by Mr. Utoliti's former counsel's ineffective assistance. *Id.* Accordingly, it is unlikely that Mr. Utoliti's immigration case will end in an order of removal that renders him deportable, and this factor weighs in his favor.<sup>7</sup>

Mr. Utoliti is therefore likely to succeed on the merits of his petition and this factor also weighs heavily in his favor.

### **III. The Balance of Equities and Public Interest Weigh Heavily in Mr. Utoliti's Favor.**

The final considerations in a request for a TRO – the balance of the equities and public interest – weigh strongly in Mr. Utoliti's favor. Where, as here, the government is a party, these two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Bd. of Cty. Commissioners of Boulder*

---

<sup>7</sup> Because Mr. Utoliti is stateless, even if he were to receive a final order of removal in the future, the government will likely face significant challenges in obtaining the necessary travel documents to facilitate his removal. In *Sheikh v. Choate*, this Court held that the government's inability to ultimately remove a noncitizen weighed in his favor. 2022 WL 17075894, at \*4 (D. Colo. 2022). Here, Mr. Utoliti has presented robust arguments both that he is not in fact removable, and even if he were, he has strong claims for multiple forms of relief from deportation. Thus, further tipping the balance in his favor.

*Cty. v. Suncor Energy (U.S.A.) Inc.*, No. 18-CV-01672 (WJM-SKC), 2019 WL 4926764, \*7 (D. Colo. Oct. 7, 2019).

When assessing whether a TRO or preliminary injunction is warranted, the Court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 24 (2008). “When a constitutional right hangs in the balance,” it “usually trumps any harm to the defendant.” *Free the Nipple—Fort Collins*, 916 F.3d at 806. The “public interest is best served by ensuring the constitutional rights of person within the United States.” *Sajous v. Decker*, 2018 WL 2357266, at \*13 (S.D.N.Y. 2018) (internal citation omitted); *Free the Nipple—Fort Collins*, 237 F. Supp. 3d at 1134 (It is “always in the public interest to prevent the violation of a party’s constitutional rights”) (citing *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998); *Stawser v. Strange*, 44 F. Supp.3d 1206, 1210 (S.D. Ala. 2015)).

In granting a temporary restraining order related to unlawful immigration detention, the District of Colorado noted that requiring ICE’s “compliance with the law serves the public interest.” *Andujo-Andujo v. Longshore*, 2014 WL 2781163 at \*6 (D. Colo. June 19, 2014). Indeed, courts granting temporary restraining orders in immigration habeas cases have routinely found that these factors weigh in a petitioner’s favor. *See, e.g., Pham*, 2023 WL 2744397 at \*7 (noting the administrative burden of a bond hearing is minimal when weighed against a petitioner’s severe hardships); *Xuyue Zhang*, 612 F. Supp. 3d at 1017 (“[I]t stands to reason that the public interest benefits from a preliminary injunction that expedites a bond hearing to ensure that no individual is detained in violation of the Due Process Clause.”).

Here, the balance of harms and public interest weigh heavily in Mr. Utoliti's favor. Mr. Utoliti requests the most basic of due process protections – an individualized hearing to determine whether his continued detention is justified and necessary. Absent such a hearing, Mr. Utoliti remains indefinitely detained in conditions akin to criminal confinement where he fears for his safety, receives inadequate medical and mental healthcare, and where he is separated from his family and unable to provide for them. *See, e.g., Wingo*, 407 U.S. at 532–33; *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (noting that the government “cannot suffer harm from an injunction that merely ends an unlawful practice”); *Velasco Lopez*, 978 F.3d at 850; *Black v. Decker*, 103 F.4th 133, 154 (noting that “where a noncitizen poses no danger and is not a flight risk, all the government does in requiring detention is separate families and remove from the community breadwinners, caregivers, parents, siblings and employees.”) (cleaned up).

Mr. Utoliti has experienced years of trauma in Uganda. As a child, he experienced severe physical, verbal, and sexual abuse from Ugandan police officers while he was detained. Exh. A at ¶ 12. He continues to suffer from severe mental health symptoms which have been severely exacerbated by his detention. *Id.* at ¶¶ 25-26. Beyond the significant harm to himself, Mr. Utoliti has further been denied the opportunity to grieve with his family following the loss of his brother and he has not been able to provide for them during this difficult emotional time. *Id.* at ¶¶ 3-9. DHS continues to violate Mr. Utoliti's liberty interest while he is separated from his family, fears for his safety, and receives inadequate medical and mental healthcare. *See, e.g., Wingo*, 407 U.S. at 532–33; *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (noting that the government “cannot

suffer harm from an injunction that merely ends an unlawful practice”); *Velasco Lopez*, 978 F.3d at 850.

Mr. Utoliti’s continued suffering in detention is particularly egregious given that Respondents have never provided a constitutionally adequate bond hearing at which DHS was required to demonstrate that his continued detention is justified. Moreover, any potential concerns raised by Respondents about flight risk or danger can be ameliorated through the imposition of minimal supervision requirements that do not require Mr. Utoliti’s indefinite detention. *See Thakker v. Doll*, 451 F. Supp. 3d 358, 371 (M.D. Pa. 2020) (“We note that ICE has a plethora of means other than physical detention at their disposal by which they may monitor [persons civilly detained] and ensure that they are present at removal proceedings, including remote monitoring and routine check-ins.”); *Hernandez*, 872 F.3d at 991 (observing that one of ICE’s alternatives to detention programs, the Intensive Supervision Appearance Program, “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Notably, the criminal court reviewing Mr. Utoliti’s case imposed only a four-month jail sentence, which he completed over two years ago. In addition to any terms of supervision the immigration court may impose, Mr. Utoliti will continue to be subject to the conditions of his probation, further ensuring compliance with any release terms. Exh. A at ¶ 43.

DHS regularly decides not to detain individuals in removal proceedings. Approximately 98 percent of people subject to removal proceedings are not incarcerated by DHS; thus, the agency has extensive experience monitoring people who have pending immigration cases.<sup>8</sup> DHS also frequently

---

<sup>8</sup> Congressional Research Service, *Immigration: Alternatives to Detention (ATD) Programs*, July 8, 2019, available at: <https://fas.org/sgp/crs/homesecc/R45804.pdf>.

releases persons who otherwise would be subject to mandatory detention. *Franco-Gonzalez*, 2013 WL 3674492, at \*20 (C.D. Cal. Apr. 23, 2013) (affording individualized bond hearings after six months of detention to class members even when the mandatory detention statute under § 1226(c) would otherwise apply).

Similarly, EOIR's non-detained docket far exceeds the number of cases on its detained docket. As of November 2024, nearly 3.6 million cases were pending before U.S. immigration courts.<sup>9</sup> In contrast, at the end of Fiscal Year 2024, ICE held 37,684 people in custody.<sup>10</sup> Even assuming every person in ICE custody has a case pending before EOIR, that would mean only about 1 percent of cases currently pending before EOIR are on a detained docket. Transferring Mr. Utoliti's case to the non-detained docket is not burdensome.

Given there is no countervailing government or public interest in Mr. Utoliti's indefinite detention without a constitutionally adequate bond hearing, he makes a strong showing that both the balance of harms and the public interest weigh in his favor. *Cf. Black v. Decker*, 103 F.4th at 154 (finding no public interest in the prolonged detention of those who are neither dangerous nor a risk of flight).

**IV. In the Alternative, This Court Should Enjoin Respondents from Transferring Mr. Utoliti Out of This District During the Pendency of This Case.**

If the Court does not grant preliminary injunctive relief compelling Respondents to afford Mr. Utoliti an individualized bond hearing, Mr. Utoliti respectfully requests that, at a minimum, this

---

<sup>9</sup> Congressional Research Service, *Immigration Courts: Decline in New Cases at the End of FY2024*, available at: <https://crsreports.congress.gov/product/pdf/IN/IN12463#:~:text=The%20number%20of%20pending%20cases,the%20court%20backlog%20has%20slowed.>

<sup>10</sup> ICE, *Fiscal Year 2024 Annual Report*, available at: <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

Court enjoin Respondents from transferring him outside the District of Colorado during the pendency of his underlying habeas case. In a recent case in this district, *Fuentes v. Choate*, 2024 WL 2978285 (D. Colo. June 13, 2024), the respondents transferred the petitioner to an ICE facility in Arizona one day before she was able to get her habeas petition on file with this Court, thus frustrating this Court's exercise of jurisdiction. In order to preserve this Court's jurisdiction over this matter, facilitate judicial review of Mr. Utoliti's significant constitutional claims, and preserve judicial resources by avoiding the necessity of refiling this case elsewhere, Mr. Utoliti respectfully asks this Court enjoin his transfer outside this district during the pendency of this case.

#### **CONCLUSION**

Based on the foregoing, Mr. Utoliti respectfully requests that this Court grant the motion for a temporary restraining order. In the alternative, Mr. Utoliti asks this Court to order Respondents to show cause within seven days establishing why his habeas petition should not be granted.

Dated: February 7, 2025

Respectfully submitted,

s/ Laura Lunn

*Director of Advocacy & Litigation*

Laura Lunn (OR 141480)

Rocky Mountain Immigrant Advocacy Network

7301 Federal Boulevard, Suite 300

Westminster, Colorado 80030

Tel: (720) 370-9100

llunn@rmian.org

**VERIFICATION**

I, s/ Laura Lunn, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petitioner's Motion for a Temporary Restraining Order are true and correct.

Dated: February 7, 2025

**CERTIFICATE OF SERVICE**

I, Laura Lunn, hereby certify that on February 7, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Laura Lunn, hereby certify that I have mailed a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on February 7, 2025.

Kevin Traskos  
Chief, Civil Division  
U.S. Attorney's Office  
District of Colorado  
1801 California Street, Ste. 1600  
Denver, CO 80202

James McHenry  
Acting Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

And to: Benjamine Huffman and Caleb Vitello, DHS/ICE, c/o:

Office of the General Counsel  
U.S. Department of Homeland Security  
2707 Martin Luther King Jr. Ave., SE  
Washington, D.C. 20528

And to:

Dawn Ceja  
GEO Group, Inc.  
3130 N. Oakland Street  
Aurora, CO 80010

And to:

Robert Guadian  
Denver ICE Field Office  
12445 E. Caley Ave.  
Centennial, CO 80111

s/ Laura Lunn  
*Director of Advocacy & Litigation*  
Rocky Mountain Immigrant Advocacy Network  
*Pro Bono Counsel for Petitioner*

