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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Case No. 26-cv-01046

YAIROVIS SANTACRUZ MACIAS,
Petitioner
v.
JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
GEORGE VALDEZ, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,
Respondents

PETITIONER-PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Petitioner-Plaintiff, Yairovis Santacruz Macias ("Mr. Santacruz"), moves for a temporary restraining order against Respondents-Defendants ("Defendants") pursuant to Rule 65 and the All Writs Act. Defendants incarcerate Mr. Santacruz at the Immigration and Customs Enforcement ("ICE") Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility"). Defendants deny Plaintiff his liberty despite lacking the authority to do so. The Court should order Plaintiff's immediate release. The Court should further enjoin Defendants from transferring Plaintiff outside of the Court's jurisdiction while it considers his case.

I. Factual Background.

On August 25, 2020 an immigration judge ("IJ") ordered Mr. Santacruz removed to Cuba. Exh.1; Exh. 2; Exh. 3. Neither Mr. Santacruz nor ICE appealed that decision.*See* Exh. 1. As of that date, Mr. Santacruz was subject to a final order of removal to Cuba. 8 U.S.C. § 123(a)(1)(B)(i). ICE kept Mr. Santacruz in its custody pursuant to 8 U.S.C. §§ 1231(a)(1), (2) for 141 days. Exh. 2.

ICE then released Mr. Santacruz on an Order of Supervision ("OSUP"). *Id.* Mr. Santacruz dutifully complied with the reporting requirements of his OSUP for the next 5 years. *Id.* Then, without notice or an opportunity to be heard, ICE jailed Mr. Santacruz again on January 7, 2026 when he presented himself to ICE upon ICE's request.

For the past 65 days, ICE has not presented Mr. Santacruz with a travel document to secure his removal. In fact, ICE has never presented Mr. Santacruz with a travel document despite his order of removal being final for over 2,000 days. Since his reincarceration, ICE has not given Mr. Santacruz an interview at which he can contest the necessity of his incarceration. ICE has not given Mr. Santacruz a timeline for his removal. As of today, Mr. Santacruz has been deprived of his

liberty at the Aurora Facility for an aggregate of 206 days since his removal order became final. This Court must therefore order his immediate release.

II. Legal Standard for Granting Preliminary Relief.

Mr. Santacruz is entitled to preliminary relief: (1) he is likely to succeed on the merits; (2) he will suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003). The Court likewise has independent authority under habeas corpus, 28 U.S.C. § 2241, to order the immediate release of detained persons from unlawful confinement.

III. Legal Argument – The Court Should Order Preliminary Relief

a. Mr. Santacruz is Likely to Succeed on the Merits.

ICE's decision to keep Mr. Santacruz incarcerated is unlawful. He is likely to succeed in his petition and the Court should grant this Motion.

i. *Mr. Santacruz's Ongoing Incarceration Violates the Statute and Constitution*

ICE is generally required to physically remove someone subject to a final removal order during the 90-day removal period. 8 U.S.C. § 1231(a). The removal period begins on: "(i) [t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Incarceration during the removal period is mandatory. 8 U.S.C. § 1231(a)(2). Under 8 U.S.C. § 1231(a)(6), ICE "may" keep someone incarcerated beyond the 90 days under limited circumstances. 8 U.S.C. § 1231(a)(6).

In *Zadvydas*, the U.S. Supreme Court held that 8 U.S.C. § 1231(a)(6), when "read in light of the Constitution's demands, limits a [noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." 533 U.S.

at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id.* at 699–700.

The "presumptively reasonable period of detention" for someone subject to a final order of removal is six months. *Zadvydas*, 533 U.S. at 701. ICE's administrative regulations also recognize that the Headquarters Post-Order Detention Unit ("HQPDU") has a six-month period for determining whether there is a significant likelihood of a noncitizen's removal in the reasonably foreseeable future. 8 C.F.R. § 241.4(k)(2)(ii). ICE cannot continue to detain someone beyond the presumptive six months pursuant to 8 U.S.C. § 1231(a)(1)(C) except in limited circumstances. "A review of the case law shows that the courts have read § 1231(a)(1)(C) narrowly." *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 501 (S.D.N.Y. 2009) (collecting cases). "The Congressional intent underlying § 1231 is for the Attorney General to remove a [ ] [noncitizen] subject to an order of removal within the 90-day removal period, if possible." *Id.*, at 502; *Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005). It is "the responsibility of [ICE] to make a bona fide attempt to do so within the removal period." *Farez-Espinoza*, 600 F.Supp.2d at 502. When ICE does not fulfill its responsibility, § 1231(a)(1)(C) does not apply. *Id.*; *Nzayikorera v. Fabbricatore*, 21-CV-02037-RMR, 2021 WL 9385836, at *2 (D. Colo. Sep. 9, 2021) ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute") (citation and quotations omitted).

The statute does not permit ICE to pause and restart the presumptively reasonable period of post-removal detention by repeatedly detaining and releasing a noncitizen after a final removal order. *Aguilar v. Noem*, 25-cv-03463-NYW, 2025 WL 3514282, at *3 (D. Colo. Dec. 8, 2025)

(collecting cases); *Farez-Espinoza*, 600 F. Supp. 2d at 499; *Ulysse v. Department of Homeland Sec.*, 291 F.Supp.2d 1318, 1325 (M.D.Fla. 2003). ICE cannot "arbitrarily trigger commencement of the removal period by simply waiting to take a [noncitizen] into custody . . . If [ICE] are allowed the liberty to decide when they will comply or even attempt compliance with the statutes that they are charged with enforcing, the statutory scheme will be rendered a nullity . . . . Federal agencies should not and do not have such power." *Uylsee*, 291 F.Supp.2d at 1325–26; *Diaz-Ortega v. Lund*, 1:19-cv-670-P, 2019 WL 6003485, at *9–10 (W.D.La. Oct. 15, 2019). In other words, district courts should "conclude that at detainee's periods of detention should be considered together in determining whether the detention has exceeded the presumptively reasonable time under *Zadvydas*." *Aguilar*, 2025 WL 3514282, at *3. Both Judge Wang, *id.*, and Chief Judge Brimmer agree, *Pena-Gil v. Lyons*, 25-cv-03268-PAB-NRN, 2025 WL 3268333, at *2 (D. Colo. Nov. 24, 2025).

After six months of incarceration, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. *Aguilar*, 2025 WL 3514282, at *4. That requirement is particularly relevant when ICE, as here, revokes someone's OSUP to presumably effectuate their removal. 8 C.F.R. § 241.13(i)(2); *Pan v. Oddo*, No. 3:25-cv-00265, 2025 WL 3960013, at *2 (W.D. Pa. Dec. 1, 2025), *report and recommendation adopted*, No. 3:25-cv-265, 2025 WL 3701296 (W.D. Pa. Dec. 21, 2025).

The good reason standard is satisfied "by, inter alia, showing the existence of either institutional barriers to repatriation or obstacles to . . . removal." *Aguilar*, 2025 WL 3514282, at *4 (citation omitted) (collecting cases). Evidence of obstacles to removal includes the government's inability to remove Mr. Santacruz to Cuba for the past 2,026 days and its failure to

receive, let alone request, any travel documents to remove Mr. Santacruz to a third country. *See Pena-Gil*, 2025 WL 3268333, at *3.

Obstacles to Mr. Santacruz's removal stacked higher on February 25, 2026, when the District of Massachusetts issued its decision in *D.V.D. v. U.S. Department of Homeland Security*, ---F.Supp.3d---, 2026 WL 521557 (D. Mass. Feb. 25, 2026). There, the court set aside Respondents' Third Country Removal Policy as unlawful and ordered Respondents to give class members a "meaningful opportunity to raise a country-specific claim against removal before removal to any third country." *Id.* at *44. Mr. Santacruz is a class member[1] and ICE has not notified him of an attempt to remove him to a third country (or any country) since his reincarceration. But considering its inability to remove Mr. Santacruz to Cuba for the past 5 years, and now its inability to remove Mr. Santacruz to a third country[2] without providing him meaningful process, ICE is not significantly likely to remove Mr. Santacruz in the reasonably foreseeable future.

Mr. Santacruz therefore met his threshold burden to show good reason to believe that his removal is not significantly likely in the reasonably foreseeable future. ICE has been unable to remove him for over 5 years and has not provided Mr. Santacruz with a travel document or informed him of a plan to secure his removal. ICE must now release Mr. Santacruz unless it can prove that removal is significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S.

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[1] On April 18, 2025, the court certified a nationwide class defined as "[a]ll individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5) or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in prior proceedings as a country to which the individual would be removed." *D.V.D. v. DHS*, 778 F.Supp.3d 355, 378 (D. Mass 2025).

[2] The court stayed its decision for fifteen days "from date of issuance or until the First Circuit rules on any motion for administrative stay or stay pending appeal . . . ." *D.V.D.*, 2026 WL 521557, at *44. As of the date of this petition and the concurrently filed Verified Petition for Writ of Habeas Corpus, no stay has been granted.

at 701 (after "the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence to rebut that showing" or the petition will be granted); *Morales-Fernandez*, 418 F.3d at 1124 ("The Government having brought forward nothing to indicate that a substantial likelihood of removal subsists despite the passage of six months . . . the petitions for habeas corpus should have been granted"); *Nzayikorera*, 2021 WL 9385836 (same). ICE cannot meet that burden with "bare assertions" that it is pursuing removal to a third country and that it believes removal is significantly likely in the reasonably foreseeable future. *Aguilar*, 2025 WL 3514282, at *5–6. It must instead provide concrete evidence of that likelihood because "[u]nsubstantiated assertions that the government will pursue removal are insufficient to satisfy its burden." *Pena-Gil*, 2025 WL 3268333, at *3 (citation omitted).

ICE must release Mr. Santacruz forthwith. *Zadvydas*, 533 U.S. at 699–700. ICE no longer has the statutory authority to keep Mr. Santacruz incarcerated, and its decision to keep him jailed pursuant to § 1231 raises serious constitutional concerns. *Zadvydas*, 533 U.S. at 689–92.

ii. *Mr. Santacruz s Continued Incarceration Violates Procedural Due Process.*

ICE reincarcerated Mr. Santacruz without notice or an opportunity to be heard despite knowing that his removal is not significantly likely in the reasonably foreseeable future. In other words, ICE violated his right to procedural due process.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified). The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a

fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacremento v. Lewis*, 532 U.S. 833, 845–46 (1998).

Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. 424 U.S. at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of 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." *Id.* A proper application of the test demonstrates ICE's unlawfulness and the need for this Court to order Mr. Santacruz's release.

First, the private liberty interest at stake is the most significant liberty interest there is, the interest in being free from imprisonment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from bodily restrain has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Incarceration "constitutes a significant deprivation of liberty that requires due process protection" no matter the purpose. *Jones v. United States*, 463 U.S. 354, 361 (1983).

Mr. Santacruz has a protected liberty interest even though he was "subject to extensive conditions of release . . . ." *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1030 (N.D.Ca. 2025) (citation omitted); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Moreover, ICE jails Mr. Santacruz in a facility that every court in this District has determined is akin to a penal institution. *E.g.*, *Daley v. Choate*, 22-cv-03034 (RM), 2023 WL 2336052 at *4 (D. Colo. 2023). This factor therefore weighs heavily in Mr. Santacruz's favor.

Second, the risk of erroneous deprivation of Mr. Santacruz's liberty interest is significant because ICE's decision to re-jail Mr. Santacruz lacked *any procedures* at all, and ICE has not provided Mr. Santacruz with the required process since his reincarceration. *E.g.*, *Lopez v. Sessions*, 18 Civ. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. Jun. 12, 2018) (finding that the petitioner's "re-detention, in the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest"). Moreover, there is "no statutory or regulatory entitlement to a bond hearing" for individuals like Mr. Santacruz who ICE jails pursuant to § 1231(a). *Guillermo M.R.*, 791 F.Supp.3d at 1034. This factor therefore weighs heavily in his favor because at no point was there any notice, any process, or any independent adjudicator to consider whether stripping Mr. Santacruz of his liberty was necessary to prevent flight or danger to the community.

Third, Government's interest is not served by the process it gave Mr. Santacruz because, once again, it gave him no process. The Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690 (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.*; *Demore v. Kim*, 538 U.S. 510, 515, 527–28 (2018). The non-existent process to jail Mr. Santacruz without notice, without cause, and without an interview after having released him 5 years ago does not address the government's purported interest and reeks of arbitrariness. *Lopez*, 2018 WL 2932726 at *12. This is especially true where—as here—the noncitizen "was released pursuant to a process that involved a determination that he was neither a danger to himself or others and" then re-detained "without prior notice, a showing of changed circumstances, or any meaningful opportunity to respond . . . ." *Id.* This factor therefore also weighs in his favor.

Under the circumstances, the Government's "ongoing detention of [Mr. Santacruz] with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights." *J.U. v. Maldonado*, 805 F.Supp.3d 482, 498 (E.D.N.Y. 2025). Courts have repeatedly found that ICE's failure to provide noncitizens with notice and the opportunity to be heard prior to reincarceration violates procedural due process. *E.g.*, *Grigorian v. Bondi*, 25-cv-22914-RAR, 2025 WL 2604573, at *6–10 (S.D.Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D.Ky. Sept. 4, 2025); *Zhu v. Genalo*, 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *5 (D. Mass. June 20, 2025); *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 163–64 (W.D.N.Y. 2025). This Court should do the same.

iii. *ICE's Reincarceration of Mr. Santacruz Violates its Own Regulations and the Accardi Doctrine.*

ICE's decision to reincarcerate Mr. Santacruz also violates ICE's own regulations and the *Accardi* doctrine. The INA's implementing regulations require that ICE give noncitizen's notice of the reasons for an OSUP revocation and a prompt interview to respond to those reasons. 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 241.13(i); *Perez Escobar v. Moniz*, 792 F.Supp.3d 224, 225 (D.Mass. 2025) (discussing regulatory requirements for OSUP revocation); *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at * 3–4 (E.D.Ca. July 16, 2025) (same)

Those regulations provide that a noncitizen "who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody." 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 241.13(i). The regulations require the government to provide notice to the noncitizen of the "reasons for revocation of his or her release or parole" and further provide the noncitizen "an initial informal interview *promptly* after his or her return to Service custody to afford the [noncitizen] an opportunity to response to the reasons for revocation

stated in the notification." 8 C.F.R. § 241.4(l)(1) (emphasis added); 8 C.F.R. § 241.13(i)(3) (same). If not released following the informal interview, ICE must provide the jailed noncitizen the "normal review process" of custody determinations within three months after release is revoked. 8 C.F.R. § 241.4(l)(3); 8 C.F.R. § 241.13(i)(2).

"Government agencies are required to follow their own regulations." *Hoac*, 2025 WL 1993771, at *4 (citing *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). "[W]here an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, like the opportunity to be heard, and [ICE] fails to adhere to it, the challenged [action] is invalid . . . ." *Waldron v. I.N.S.*, 17 F.3d 551, 518 (2d Cir. 1993) (alterations in original). "[F]ailure to give [a noncitizen] meaningful notice of the basis for its revocation of his release violate[s] the regulation and due process." *Perez-Escobar*, 2025 WL 2084102, at *2 (citation omitted).

Failing to provide an interview after revocation violates the same. *Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D.Kan. Jun. 17, 2025) (finding "that officials did not properly revoke petitioner's release pursuant to § 241.13" because "and most obviously . . . petitioner was not granted the required interview upon the revocation of his release"); *Ceesay*, 781 F.Supp.3d. at 166 (finding petition was not afforded even minimal due process protections when ICE failed to provide petitioner an informal interview upon reincarceration); *Santamaria Orellana v. Baker*, 25-1788-TDC, 2025 WL 2444087, at * 8 (D.Md. Aug. 25, 2025) (granting habeas petition for ICE's failure to, *inter alia*, oblige by regulations to revoke OSUP); *Cf. Noem v. Abrego Garcia*, 604 U.S. ---, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) (quoting 8 C.F.R. § 241.4(l), "in order to revoke conditional release the Government must provide adequate

notice and promptly arrange an initial informal interview . . . to afford the [noncitizen] an opportunity to respond to the reasons for the revocation stated in the notification").

ICE's regulatory violations here are numerous. ICE did not provide Mr. Santacruz with notice of the revocation of his OSUP and did not provide him with a prompt interview after his incarceration. In fact, it has not provided him with any interviews since reincarcerating him. ICE's decision to rejail Mr. Santacruz is therefore invalid and this Court must order his immediate release.

iv. *The Government's Actions Violate the Administrative Procedure Act.*

Under the Administrative Procedure Act ("APA") "a court must hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, that is contrary to the constitutional right or power, or that is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." *Alfaro Herrera*, 2026 WL 91470, at *12 (quoting and citing 5 U.S.C. § 706(2)(A)-(C)).

As discussed *supra*, ICE's decision to revoke Mr. Santacruz's OSUP, redetain him, and fail to provide him with the process he is due upon reincarceration violates the statute, the constitution, and the regulations. It therefore also violates the APA.

b. Mr. Santacruz Will Suffer Irreparable Harm in the Absence of a Temporary Restraining Order.

Mr. Santacruz suffers irreparable harm each day he remains unlawfully incarcerated. 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). "Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 805–06 (10th Cir. 2019) (quotation omitted); (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." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); *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"). Courts routinely find far less weighty interests justify preliminary relief. *Ohio Oil Co. v. Conway*, 279 U.S. 813 (1929) (tax payment); *RoDa Drilling v. Siegal*, 552 F.3d 1203, 1210-11

(10th Cir. 2009) (control of real property); *Bray v. QFA Royalties, LLC*, 486 F.Supp.2d 1237 (D. Colo. 2007) (terminating sandwich shop franchise agreements).

Underscoring this harm, the government itself documented alarmingly poor conditions in ICE detention centers.[3] Nevertheless, years after the release of the OIG report individuals like Mr. Santacruz continue to suffer in ICE custody, experiencing lack of access to outdoor space, contact visitation with loved ones, and nourishing fresh food; while simultaneously enduring excessive use of force, racial discrimination, and retaliation against individuals who complain about these conditions.[4] 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 DHS' own detention standards.[5] The harm Mr. Santacruz suffers while unlawfully jailed is irreparable.

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[3] *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-cites-concerns-detainee-treatment-and-care.

[4] The Colorado Sun, *Racial discrimination, excessive force and retaliation alleged at ICE detention center in Aurora*, Apr. 14, 2022, *available at*: https://coloradosun.com/2022/04/14/aurora-detention-center/; Denverite, *ACLU Colorado releases scathing report of Aurora's private immigration detention center*, Sep. 18, 2019, *available at*: https://denverite.com/2019/09/18/aclu-colorado-releases-scathing-report-of-auroras-private-immigrant-detention-center/.

[5] *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; 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; AIC/AILA 2018 Complaint, "Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility,"[5] (Jun. 4, 2018) *available at*: http://www.americanimmigrationcouncil.org/sites/default/files/

c. Balancing the Equities and Public Interest Weigh Heavily in Favor of Relief.

The third and fourth factors tip strongly in Mr. Santacruz's favor. Where, as here, the government is a party to a case, the final two injunction factors—i.e., the balance of equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). "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. *Cf. Awad*, 670 F.3d at 1131 ("[W]hen the law that voters wish to enact is likely unconstitutional, their interests do not outweigh [a Petitioner's interest] in having his constitutional rights protected"). The "public interest is best served by ensuring the constitutional rights of person within the United States." *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *13 (S.D.N.Y. 2018) (internal citation omitted); *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 237 F. Supp. 3d 1126, 1134, *aff'd*, 916 F.3d 792 (10th Cir. 2019) (It is "always in the public interest to prevent the violation of a party's constitutional rights") (quoting *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)). *See Adams ex rel. Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996) ("The public interest would be best served by enjoining the defendants from infringing on the plaintiff's right to equal protection"). On the other hand, the government cannot claim injury from an order enjoining unlawful action. *Wages & White Lion, Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021) ("There is generally no public interest in … unlawful agency action").; *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Here, the balance of harms and public interest both weigh heavily in Mr. Santacruz's favor. Defendants continue to violate Mr. Santacruz s liberty interest while he suffers in detention. *Wingo*,

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general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf.

407 U.S. at 532–33 ("[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"); *Velasco Lopez*, 978 F.3d at 850 (same). Meanwhile, DHS would face no hardship if Mr. Santacruz were released from its custody. Most cases monitored by ICE—approximately 98 percent—are for people who are not in the agency's custody, indicating that DHS has extensive experience overseeing non-detained dockets.[6] In fact, there is formal infrastructure that recognizes the presence of people with final orders of removal in the United States. *See* 8 C.F.R. § 274a.12(c)(18) (affording the ability to obtain employment authorization for persons ordered removed where the person's deportation cannot be effectuated, it is impractical, or contrary to public interest).

Moreover, since 2001, U.S. government officials have adhered to the Supreme Court's order in *Zadvydas* and have significant experience monitoring persons with final orders of removal and has the authority, infrastructure, and resources to effectuate deportations in the future should circumstances change. *See Hamama v. Adducci*, 349 F. Supp. 3d 665, 670 (E.D. Mich. 2018), *vacated and remanded*, 946 F.3d 875 (6th Cir. 2020) (class action brought by Iraqi citizens with final orders of removal who lived freely in the United States until they were arrested by DHS, indicating that DHS has the ability and capacity to arrest persons post-removal order in an attempt to effectuate deportation); *Ibrahim v. Acosta*, 326 F.R.D. 696, 698 (S.D. Fla. 2018) (litigation brought by group of Somalians with final orders of removal who were living in the community before DHS arrested and attempted to deport them).

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[6] Congressional Research Service, *Immigration: Alternatives to Detention (ATD) Programs*, Jul. 8, 2019, *available at*: https://fas.org/sgp/crs/homesec/R45804.pdf.

Finally, Mr. Santacruz's release is in the public interest given it is less costly for the government than continued detention. DHS widely utilizes alternatives to detention to monitor cases after release from custody via bond or parole.[7]

In sum, there is no countervailing government or public interest fueling Mr. Santacruz's continued detention and he makes a strong showing that both the balance of harms and the public interest weigh in his favor.

IV. Conclusion

Accordingly, the Court should grant a temporary restraining order (or preliminary injunction) requiring either Plaintiff's immediate release from custody. The Court should further enjoin the Defendants from transferring Mr. Santacruz outside the District of Colorado while this matter is pending.

Dated: March 13, 2026

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF-PETITIONER

[7] ICE, *Alternatives to Detention*, Jul. 6, 2023, https://www.ice.gov/features/atd ("Through the end of July 2022, approximately 4.5 million noncitizens were being overseen on ICE's non-detained docket.")

CERTIFICATE OF CONFERRAL

I hereby certify that consistent with D. Colo. Local Rule 7.1, before filing this motion, I conferred with counsel for Defendants-Respondents, Kevin Traskos of the US Attorney's Office for the District of Colorado, regarding the relief requested herein. Defendants-Respondents have yet to provide their position on this motion.

/s/ Daniel Herrera
Daniel Herrera
Attorney for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I, Daniel Herrera, hereby certify that on March 13, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Leslie Bezanilla, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail by close of business Tuesday March 17, 2026, or pursuant to any forthcoming Court order requiring something else. Based on prior conferrals we anticipate Kevin Traskos, attorney for Respondents, will accept service on behalf of all Respondents.

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