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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Case No. 1:26-cv-01168

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

I. Factual Background.

On July 12, 2012 an immigration judge ("IJ") ordered Mr. Nguyen removed to Vietnam. Exh.1. Neither Mr. Nguyen nor ICE appealed that decision. *Id.* As of that date, Mr. Nguyen was subject to a final order of removal to Vietnam. 8 U.S.C. § 123(a)(1)(B)(i). ICE kept Mr. Nguyen in its custody pursuant to 8 U.S.C. §§ 1231(a)(1), (2) until approximately October 4, 2012. *Id.*

ICE then released Mr. Nguyen on an Order of Supervision ("OSUP"). *Id.* Mr. Nguyen dutifully complied with all aspects of his OSUP for the next almost 14 years. *Id.* During those approximately 14 years, ICE never presented Mr. Nguyen with a travel document to any country; ICE never asked him to fill out paperwork requesting a travel document to any country; ICE never discussed the possibility of even getting a travel document to any country. *Id.* Mr. Nguyen did not have contact with the criminal legal system.

Then, without notice or an opportunity to be heard, ICE jailed Mr. Nguyen again on December 3, 2025 when he appeared for his regularly scheduled OSUP appointment. *Id.* His reincarceration was particularly surprising because ICE told Mr. Nguyen and his immigration attorney prior to his appointment that ICE would not detain him at the appointment. *Id.*

For the past 107 days, ICE has not presented Mr. Nguyen with a travel document to secure his removal. *Id.* In fact, ICE has never presented Mr. Nguyen with a travel document despite his order of removal being final for 4,999 days. *Id.* Since his reincarceration, ICE has not given Mr. Nguyen a timeline for his removal. *Id.* ICE has not explained to Mr. Nguyen what changed circumstances exist—if any—that now make his removal significantly likely in the reasonably foreseeable future. *Id.*

ICE also did not give Mr. Nguyen a prompt interview after it arrested him in December. *Id.* Instead, ICE notified Mr. Nguyen through written correspondence on or about December 27, 2025 that it would provide him with an interview on March 2, 2026. *Id.* Mr. Nguyen planned to prepare for that interview with his immigration counsel. *Id.* But ICE, without warning, interviewed Mr. Nguyen instead on February 20, 2026, making it impossible for him to adequately prepare for the interview. *Id.* ICE has not advised Mr. Nguyen the outcome of that interview. *Id.* ICE has also never provided him with information on the purpose or outcome of paperwork it asked him to fill out while recently reincarcerated related to his family's names, dates and places of birth. *Id.*

As of today, Respondents have deprived Mr. Nguyen of his liberty at the Aurora Facility for an aggregate of approximately 191 days since his removal order became final. This Court must therefore order his immediate release.

II. Legal Standard for Granting Preliminary Relief.

Mr. Nguyen 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. Nguyen is Likely to Succeed on the Merits.

ICE's decisions to incarcerate Mr. Nguyen and keep Mr. Nguyen incarcerated are unlawful. He is likely to succeed in his petition and the Court should grant this Motion.

i. *Mr. Nguyen'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 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. Judge Wang, *id.*, Chief Judge Brimmer, *Pena-Gil v. Lyons*, 25-cv-03268-PAB-NRN, 2025 WL 3268333, at *2 (D. Colo. Nov. 24, 2025); and Judge Sweeney agree, *Tran v. Baltazar*, 1:26-cv-00940-CNS, 2026 WL 764002, at *3 (D. Colo. Mar. 18, 2026). In fact, "[m]ost courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the federal government could otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them." *Siguenza v. Moniz*, 25-CV-11914-ADB, 2025 WL 2734707, at *3 (D.Mass. Sept. 25, 2025) (collecting cases).

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 (emphasis added); *Aguilar*, 2025 WL 3514282, at *4. This good reason standard is "something less" than showing that removal is not significantly likely in the reasonably foreseeable future. *Azzo v. Noem*, 3:25-cv-03122-RBM-BJW, 2025 WL 3535208, at *3 (S.D.Ca. Dec. 10, 2025); *Ahmed v. Freden*, 744 F.Supp.3d 259, 265 (W.D.N.Y. 2024) (citation omitted); *Hamed Aramin v. Baltasar, et al.*, 1:26-cv-616-RBJ, ECF 14 at *8 (D. Colo. Mar. 18, 2026). The "distinction is not a matter of semantics, but an important clarification of [Mr. Nguyen's] burden at this stage." *Aguilar*, 2025 WL 3514282, at *4. The burden is of production, not persuasion, *Cruz Medina v. Noem*, 794 F.Supp.3d 365, 379 (D. Md. 2025). 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). The court may also consider "the target country's prior record of accepting removed [noncitizens] and specific assurances from the target country regarding its willingness to accept a [noncitizen]." *Ahmed*, 744 F.Supp.3d at 265. Individuals originally from Vietnam who entered the United States prior to 1995 face unique institutional barriers to removal since Vietnam considers repatriation on "case by case basis." *Nguyen v. Hyde*, 788 F.Supp.3d 144, 151 (D.Mass 2025) (discussing history of institutional barriers to removal of people who entered the United States from Vietnam prior to 1995). ICE may merely "request [Mr. Nguyen's] removal [and] Vietnam has total discretion whether to issue a travel document . . . ." *Id.*

Here, Mr. Nguyen satisfies his burden to show good reason to believe his removal is not significantly likely in the reasonably foreseeable future. He is originally from Vietnam, does not have a Vietnamese passport, has never seen his birth certificate and does not know if he has one, and entered the United States before 1995. Exh. 1. Respondents have been unable to remove Mr. Nguyen to Vietnam for the past 4,999 days. *Id.* ICE has yet to produce a travel document for Mr. Nguyen to any country for that same period. *Id.* ICE has not indicated what changed circumstances exist to now make his removal significantly likely in the reasonably foreseeable future. *Id.* Mr. Nguyen does not have a passport or travel document to any country. *Id.* ICE has seemingly never requested one. *See id.* ICE has jailed Mr. Nguyen for 191 days. *See Pena-Gil*, 2025 WL 3268333, at *3 (finding and discussing similar facts that meet the good reason standard); *Tran*, 2026 WL 764002, at *3 (same).

ICE must now release Mr. Nguyen unless it can prove that removal is significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. 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); *Tran*, 2026 WL 764002, at *3 (same).

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

ii. *Mr. Nguyen's Incarceration Violates Procedural Due Process.*

ICE reincarcerated Mr. Nguyen 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. Nguyen'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. Nguyen 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. Nguyen 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. Nguyen's favor.

Second, the risk of erroneous deprivation of Mr. Nguyen's liberty interest is significant because ICE's decision to re-jail Mr. Nguyen lacked *any procedures* at all, and ICE has not provided Mr. Nguyen 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. Nguyen 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. Nguyen 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. Nguyen 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. Nguyen without notice, without cause, and without an interview after having released him almost 14 years ago does not address the government's purported interest and reeks of arbitrariness. *See 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. Nguyen] 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. Nguyen Violates its Own Regulations and the Accardi Doctrine.*

ICE's decision to reincarcerate Mr. Nguyen also violates ICE's own regulations and therefore the *Accardi* doctrine. The INA's implementing regulations require that ICE give noncitizens 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). In fact, before rejailing someone previously released on an OSUP, "the regulations . . . *place the burden* on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future." *Id.* at 772 (emphasis added); 8 C.F.R. § 241.13(i)(2) (permitting

revocation of an OSUP "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future").

The notice regulation requires the government to provide notice to the noncitizen of the "reasons for revocation of his or her release or parole" and 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 a meaningful and timely 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); *Nguyen*, 788 F.Supp.3d at 152–53 (granting habeas for failure to follow regulations when revoking 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. Nguyen with notice of the revocation of his OSUP and did not provide him with a prompt interview after his incarceration. Exh. 1 ICE did not present any changed circumstances before revoking his OSUP that demonstrate removal is significantly likely in the reasonably foreseeable future. *Id.* ICE did not give Mr. Nguyen notice or a meaningful opportunity to be heard at his February 20, 2026 interview because ICE advanced the interview without notice by nearly two weeks. *Id.* This Court, like others across the country must therefore order his immediate release. *E.g.*, *Noble*, 803 F.Supp.3d at 774 (collecting cases); *Nguyen*, 788 F.Supp.3d at 152–53.

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. Nguyen's OSUP and redetain him without changed circumstances, 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. *Nguyen*, 788 F.Supp.3d at 152–53.

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

Mr. Nguyen 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.[1] Nevertheless, years after the release of the OIG report individuals like Mr. Nguyen 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.[2] Respondents are on notice of the inadequate medical and mental health care available

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[1] *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.

[2] 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*

at the Aurora facility and yet they fail to mitigate the violations of DHS' own detention standards.[3] The harm Mr. Nguyen suffers while unlawfully jailed is irreparable.

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

The third and fourth factors tip strongly in Mr. Nguyen'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

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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/.

[3] *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,"[3] (Jun. 4, 2018) *available at*: http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf.

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. SNguyenge*, 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. Nguyen's favor. Defendants continue to violate Mr. Nguyen's liberty interest while he suffers in detention. *Wingo*, 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. Nguyen 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.[4] 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

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

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). Respondents supervised Mr. Nguyen in this manner—without issue—for almost 14 years prior to reincarcerating him. Exh. 1.

Finally, Mr. Nguyen'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.[5]

In sum, there is no countervailing government or public interest fueling Mr. Nguyen'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. Nguyen outside the District of Colorado while this matter is pending.

Dated: March 20, 2026 Respectfully submitted,

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[5] 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.")

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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/ Conor T. Gleason
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Attorney for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on March 20, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Emma Menchaca-Chavez, 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 within 72 business hours of filing or pursuant to any forthcoming Court order requiring something else. Kevin Traskos, attorney for Respondents, confirmed with undersigned counsel that he will accept service on behalf of all Respondents.

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