UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 26-cv-1390

Anthony Jonathan Hernandez Montes,

Petitioner,

v.

DAWN CEJA, Warden, Aurora ICE Processing Center;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and
PAM BONDI, Attorney General of the United States,

in their official capacities,

Respondents.

EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner Anthony Hernandez Montes ("Petitioner" or "Mr. Hernandez") is a noncitizen in the custody of Immigration and Customs Enforcement ("ICE") at the Aurora ICE Processing Center ("AIPC"), operated by GEO Group, Inc. His continued detention violates the Constitution and laws and regulations of the United States for the reasons set forth in the accompanying Petition challenging his detention at the AIPC. Absent immediate intervention, Petitioner faces transfer that would frustrate habeas jurisdiction and/or prolonged unlawful detention and/or imminent removal. A temporary restraining order or preliminary injunction is necessary to preserve the status quo and ensure meaningful judicial review.

FACTUAL BACKGROUND

1. Mr. Hernandez is a 32-year-old citizen of Nicaragua.
2. Mr. Hernandez entered the United States on or about September 7, 2021. ECF No. 1-1. Approximately two days later, on September 9, 2025, Mr. Hernandez encountered Customs and Border Patrol ("CBP") and was transported to the Central Processing Center in El Paso, Texas, where he was detained after he requested an interview with an Asylum Officer. *Id.*
3. The Department of Homeland Security ("DHS") initiated removal proceedings by filing a Notice to Appear ("NTA") with EOIR on or about September 13, 2021. ECF No. 1-2.
4. Mr. Hernandez was released on recognizance on September 21, 2021, and placed in the Intensive Supervision Appearance Program ("ISAP") where he attended monthly check-ins with ICE beginning December 20, 2021. ECF No. 1-3. Mr. Hernandez met all the requirements for the ISAP program until it was terminated in 2023. On October 1, 2025, Mr. Hernandez appeared for an individual merit hearing. At that hearing, an Immigration Judge ("IJ") found Mr. Hernandez ineligible for asylum and ordered Mr. Hernandez removed, however; the IJ

then immediately granted Mr. Hernandez's Application for Withholding of Removal under INA § 241(b)(3). ECF No. 1-4.

5. Upon information and belief, Mr. Hernandez was subsequently placed on an Order of Supervision ("OSUP").
6. Despite complying with all requirements of his supervision program, Petitioner was detained on October 7, 2025, at a routine, scheduled appointment that he voluntarily attended.
7. Upon information and belief, sometime after being detained on October 7, 2025, Petitioner was served with a document indicating Respondents' intent to remove Petitioner to Mexico, despite the IJ designating Nicaragua as the country for removal during Petitioner's removal proceedings.
8. On March 30, 2026, at approximately 8 a.m., an asylum officer from the United States ("U.S.") Citizenship and Immigration Services ("CIS") contacted undersigned counsel's office indicating they needed to speak about Petitioner's case. However, the CIS officer disconnected the call before undersigned counsel's office could connect her to the call.
9. To date, no IJ has ordered Petitioner be removed to Mexico or any country other than Nicaragua.
10. To date, neither Petitioner nor undersigned counsel has received any notification that Mexico, or any other country, has agreed to provide a travel document or any other type of document that allows Petitioner to enter a third country.
11. Upon information and belief, the official responsible for revoking Petitioner's order of supervision did not first refer the case to the ICE Executive Associate Director. There were no findings made that revocation was in the public interest, nor that circumstances did not

reasonably permit referral to the Executive Associate Director. Finally, the revoking official had not been explicitly delegated authority to revoke an order of supervision.

12. Upon arrest, ICE transferred Petitioner to the AIPC, where he is currently detained. Petitioner has been detained for 176 days as of April 1, 2026.

13. Upon information and belief, at no time following Petitioner's arrest did ICE explain why it revoked Petitioner's order of supervision or give him an opportunity to respond to those reasons.

LEGAL STANDARD

To obtain temporary and preliminary injunctive relief, Petitioner must demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003).

When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The arrest and detention of noncitizens who have been ordered removed is governed by 8 U.S.C. § 1231, which directs the Attorney General of the United States to effect removal within 90 days and authorizes detention during this removal period. 8 U.S.C. § 1231(a)(1)-(2). In *Zadvydas v. Davis*, the Court read an implicit limitation into 8 U.S.C. § 1231(a)(6) and held that an alien's post-removal period detention to a period reasonably necessary to bring about that alien's removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 686 (2001). After that time passes, if removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute and the noncitizen must be released. *Zadvydas*, 533 U.S. at 699-700, 28 U.S.C. § 1231(a)(3) ("If the alien does not leave or is not removed within the [90-day]

removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General.).

Regulations promulgated in the Code of Federal Regulations ("CFR") govern revocation of release concerning noncitizens who are subject to a final order of removal. *See* 8 C.F.R. § 241.4; 8 C.F.R. § 241.13. The regulations state that upon revocation of release, the noncitizen "will be notified of the reasons for revocation of his or her release," and will be given "an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *See* 8 C.R.F. § 241.4(l)(1); § 241.13(i)(3).

An order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); see also *id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute [,]" courts question whether these regulations are ultra vires of statutory authority. See, e.g., *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds). It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2,

241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. See *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

It is well settled that infringement of a constitutional right enough and require no further showing of irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976), *Nken v. Holder*, 556 U.S. 418, 435 (2009), *Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019). The conditions at the AIPC causes detention to be virtually the same as incarceration. "The 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). Incarceration also contributes to and/or causes harm to a person's emotional, psychological and physical state of being. The Tenth Circuit has noted that when someone is [detained] "potentially irreparable harm every day [one] remains in custody." Rodriguez Vazquez, 779 F.Supp.3d at 1262. This injury is "certain, great, actual, and not theoretical." *Heideman v. S. Salt Lake City, Utah*, 348 F.3d 1182, 1189 (10th Cir. 2003) (citations omitted).

ARGUMENT

I. Petitioner Is Likely to Succeed on the Merits

Mr. Hernandez will reach 180 days of post-removal order detention on April 5, 2026. The

Respondents have provided no evidence that Mr. Hernandez's removal from the U.S. is reasonably foreseeable. Because the IJ ordered Mr. Hernandez removed to Nicaragua and subsequently entered an order granting withholding of removal to Nicaragua, the Respondents must remove Mr. Hernandez to a safe third country.

Under 8 U.S.C. § 1231(b)(2), a noncitizen may be removed to a third country, but removal must be practically effectual, not merely hypothetical. The Respondents have failed to provide evidence of travel documents from a third country, Respondents have failed to demonstrate a third country has agreed to accept Mr. Hernandez, and Mr. Hernandez has no legal status, residency or connection to any third country. As such, any assertions that Mr. Hernandez will be removed to a third country is speculative, not reasonably foreseeable, and Mr. Hernandez's continued detention violates the Due Process Clause and the statutory limitations in *Zadvydas*. Additionally, Mr. Hernandez asserts that the Respondents' authority to re-detain noncitizens who were previously released pursuant to an order of supervision is restricted by 8 C.F.R. § 241.13.

Petitioner challenges his detention as unlawful based on ICE's decision to revoke his release without providing the required notice and opportunity to be heard which are required by the Due Process Clause. ICE failed to comply with its own governing regulations contained in 8 C.F.R. § 241.4(l)(1) and § 241.13(i)(3) when ICE failed to (1) provide him with notice that his Order of Supervision was revoked; (2) conduct an informal interview or afford Petitioner an opportunity to be heard; and (3) sufficiently demonstrate the changed circumstances that render his removal significantly likely in the reasonably foreseeable future. Additionally, while detention is mandatory during the 90-day removal period, once that period expires, a noncitizen "may" continue to be detained. 8 U.S.C. § 1231(a)(6).

II. Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent

Injunctive Relief.

Parties seeking preliminary injunctive relief must also show they are "*likely* to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013). Every day Petitioner is detained; his Constitutional rights are violated. This harm, particularly the violation of Petitioner's right to due process, qualifies as irreparable harm.

Petitioner is currently enduring emotional, psychological and physical harm from his continued detention. This harm is magnified by ICE's assertion that Petitioner will be removed to Mexico, a country to which he has no ties. Petitioner is afraid every day that he will be suddenly, unexpectedly taken by ICE and deported to another ICE facility.

III. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.

The final two factors for injunctive relief, balance of hardships and public interest, "merge when the Government is the opposing party." *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976), *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Tenth Circuit has held that no further showing of irreparable injury is required when the harm alleged is violation of the Petitioner's Constitutional rights because the relief available would not adequately compensate him for the alleged violations. *See Kikumura v. Hurley*, 242 F.3d 950 (10th Cir. 2001), *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003). Petitioner is suffering irreparable harm while detained. While detained, Petitioner is enduring emotional hardship as well as economic hardship. Petitioner is detained in jail-like conditions at the AIPC.

Respondents, by contrast, face minimal hardship. The Respondents would merely incur

administrative costs associated with providing procedural due process to which Respondent has a Constitutional right. Moreover, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

Finally, the Tenth Circuit held that it is "always in the public interest to prevent the violation of a party's constitutional rights." *Awad v. Ziriax,* 670 F.3d. 1111, 1132 (10th Cir. 2012), *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1147 (10th Cir. 2013), *Colorado v. DeJoy*, 487 F.Supp.3d. 1061.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant preliminary injunctive relief, enjoining Respondents from removing from transferring Petitioner outside the District of Colorado during the pendency of these proceedings, order Petitioner's immediate release under reasonable conditions.

Respectfully submitted,

/s/ Leanne Reetz Hightower

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Dated: 1st day of April 2026

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[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION

This matter having come before the Court on Petitioner's Motion for a Preliminary Injunction [Dkt. #___], and this Court having reviewed the pleadings and heard arguments from counsel, the Court hereby GRANTS petitioner's Motion for a Preliminary Injunction.

Petitioner has satisfied the requirements for preliminary injunctive relief. Petitioner has demonstrated that he is substantially likely to succeed in proving that prolonged detention without a bond hearing under 8 U.S.C. § 1225(b) is unconstitutional. Petitioner has also demonstrated that, without relief, he would suffer irreparable harm to his constitutional rights and physical and psychological health.

Accordingly, Respondents are ordered to immediately release petitioner from detention, or, in the alternative, provide petitioner a bond hearing before an Immigration Judge where the Department of Homeland Security bears the burden of establishing the necessity of petitioner's continued detention and considers alternatives to detention that could mitigate flight risk.

SO ORDERED, this ____ day of _____, 2026.

_____

Hon. _____, U.S.D.J.