IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

KHRISTYNE BATZ BARRENO, f/k/a **FREDY RICARDO BATZ BARRENO,** *Petitioner*, v. **JUAN BALTAZAR,** et al., *Respondents*.	Case No. 25-cv-3017 **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

INTRODUCTION

Petitioner, Khristyne Batz Barreno ("Ms. Batz"), moves for a temporary restraining order and preliminary injunctive relief pursuant to Fed. R. Civ. P. 65 against Respondents, requiring them to conduct a constitutionally compliant bond hearing to determine whether her prolonged detention continues to be justified. In the alternative, should the Court deny Ms. Batz's request for injunctive relief, at a minimum it should order Respondents to show cause establishing why Ms. Batz's habeas petition should not be granted. Counsel for Ms. Batz provided notice of her intent to file the accompanying habeas petition to counsel for Respondents at the U.S. Attorney's Office for the District of Colorado prior to filing on September 25, 2025. Counsel anticipates that Respondents are opposed to the present motion.

Ms. Batz is a transgender, indigenous refugee from Guatemala who lives with several serious mental health diagnoses, including [redacted]. She has been detained by ICE for at least 440 days, and her detention stands to continue for months, if not years, absent relief from this Court. As detailed in her habeas petition, her mental and

physical health are likely to significantly deteriorate as a result of her continuing, prolonged, and indefinite detention.

As of this writing, Respondents have never provided Ms. Batz with a constitutionally adequate bond hearing, and no neutral adjudicator has ever found by clear and convincing evidence that Ms. Batz is either a danger to the community or a flight risk, such as would justify DHS' decision to incarcerate her for the past 440 days. Furthermore, her 14-months-and-counting detention has become unconstitutionally prolonged under the case law of this district, thus requiring a new bond hearing to be held. Ms. Batz respectfully requests this Court grant injunctive relief ordering Respondents to hold a constitutionally adequate bond hearing within seven days.

FACTUAL BACKGROUND

Ms. Batz's childhood and teenage years were marked with trauma, [redacted]. Verified Petition (ECF No. 1) ("Pet.") at ¶¶ 22-25. After repeated harassment, abuse, and persecution, including at the hands of Guatemalan police, and in the face of severe anti-LGBT violence in Guatemala, Ms. Batz and her boyfriend decided to leave for the United States in 2018. *Id.* at ¶¶ 27-30. Since her arrival in the U.S., she has experienced severe depression and other psychological symptoms associated with her past trauma, including nightmares and hearing voices, and has been treated for [redacted]. *Id.* at ¶ 31. She has also survived serious domestic violence in the United States on several occasions, including incidents in 2020, 2022, and 2023, [redacted]

Ms. Batz was taken into custody by ICE on or about July 12, 2024 after [redacted] leveled a false theft charge against her. *Id.* at ¶¶ 33-34. She has remained detained by ICE since that time, a period of at least 440 days, most of that at the Aurora detention facility, which courts in this district have condemned as "abhorrent" and akin to criminal punishment. *Id.* at ¶ 48.

On September 3, 2024, Ms. Batz submitted a Form I-589, seeking asylum and withholding of removal under the INA and CAT, and citing her fear of persecution based on her transgender identity, her membership in a disfavored indigenous ethnic group, and her mental health. *Id.* at ¶ 35. On April 8, 2025, a merits hearing was held in immigration court, at which Ms. Batz testified regarding the sexual harassment and abuse she had endured from Guatemalan police, but unfortunately the immigration judge – in violation of the INA and its regulations – failed to record or transcribe the hearing. *Id.* at ¶¶ 36-37. Thus, when the IJ denied Ms. Batz relief from removal but failed to mention the sexual abuse by police and otherwise mischaracterized or omitted her testimony, the Board of Immigration Appeals (BIA) could not properly assess the merits of her appeal and had no choice but to remand her case for a new hearing. *Id.* at ¶¶ 37-38. There is presently no date scheduled for a new hearing. Because the losing party (Ms. Batz or DHS) at the eventual merits hearing could appeal to the BIA again, and Ms. Batz, if she did not prevail, could petition for review to the Tenth Circuit, her case stands to continue for many more months, if not years, and she would be subject to detention during that entire period, without any neutral adjudicator ever having determined that such detention was necessary.

As detailed in Ms. Batz's concurrently filed Petition for Writ of Habeas Corpus, she now seeks judicial review of her unlawful detention. Under the case law of courts in this district, as well as decisions of the First and Second Circuits and other courts, Ms. Batz is likely to succeed

on the merits of her petition, in which she seeks to be presented before a neutral adjudicator within seven days of this Court's order to determine whether her continued incarceration serves a legitimate purpose, at a bond hearing where DHS carries the burden of clear and convincing evidence.

LEGAL STANDARD

Federal Rule of Civil Procedure 65 requires a movant for a temporary restraining order to 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).

Where an injunction alters the status quo, movants must "make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 237 F. Supp. 3d 1126, 1130 (D. Colo. 2017), *aff'd*, 916 F.3d 792 (10th Cir. 2019) (quotation omitted); *see Essien v. Barr*, 457 F. Supp. 3d 1008, 1012–13 (D. Colo. 2020) (dismissing the "mandatory versus prohibitory" distinction and agreeing that a "strong showing" must be made for a detained immigrant to win a preliminary injunction). Courts cannot require that the factors weigh "heavily and compellingly" in a movant's favor; the Tenth Circuit "jettisoned the heavily-and-compellingly requirement over a decade ago." *Free the Nipple-Fort Collins*, 916 F.3d at 797 (citations and brackets omitted). Instead, a movant in this posture must merely make a "strong showing." *Id.*

The Court likewise has independent authority under habeas corpus, 28 U.S.C. § 2241, to order the immediate release of detained persons from unconstitutional confinement.

I. Ms. Batz Will Suffer Irreparable Harm in the Absence of a Temporary Restraining Order.

Ms. Batz suffers irreparable harm each day she remains detained without a constitutionally adequate bond hearing from a neutral adjudicator who assesses whether her 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)); *Conn. Dept. of Env'l Prot. 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").

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 Ms. Batz 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 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/.

at the Aurora facility and yet they fail to mitigate the violations of DHS's own detention standards.[3] Indeed, courts in this district have repeatedly echoed these concerns, likening detention at the Aurora facility to penal incarceration and calling the conditions "abhorrent," allegations Respondents have not attempted to refute. *See, e.g., Arostegui-Maldonado*, --- F. Supp. 3d ---, 2025 WL 2280357, at *7; *Martinez v. Ceja*, 760 F. Supp.3d 1188, 1195 (D. Colo. 2024) (noting the government did not contest allegations that incarceration in the Aurora detention center resembled "penal confinement"); *Daley v. Choate*, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023).

Ms. Batz's experience at the Aurora facility exemplifies the harms occurring there. As alleged in her Petition, she was sexually harassed in the transgender housing unit, and then transferred to a unit with men, where she was subject to both sexual harassment and physical violence. Pet. at ¶ 42. She also has little or no access to recreation, with her only "outdoor recreation" being an hour twice a week in a cinder-block room with a caged ceiling. *Id.* at ¶ 41. Furthermore, under recent changes in ICE policy, she now stands to lose her access to gender-

[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/wp-content/uploads/2025/01/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.

affirming care and medications. *Id.* at ¶ 47. A declaration from her social worker, Cindy Schlosser, details the substantial risks and harms that Ms. Batz faces as a result of her ongoing and indefinite detention. *See* Decl. of Cindy Schlosser (ECF No. 1-3).

Ms. Batz's continued detention is an ongoing violation of her constitutional rights, and her deprivation of liberty is substantially detrimental to her well-being. Intervention from this Court is necessary to prevent further harm. This factor therefore weighs heavily in Ms. Batz's favor.

II. Ms. Batz Has a Substantial Likelihood of Success on the Merits of Her 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 Env't*, 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, Ms. Batz's claim is likely to succeed because her continued detention without a constitutionally adequate bond hearing contravenes due process. As set out in her habeas petition, her argument is twofold: first, the initial bond hearing she received under 8 U.S.C. § 1226(a) did not comport with due process because the burden was on her to prove two negatives; and second, even if that bond hearing was adequate, her detention has now become so unconstitutionally prolonged that she must receive a second bond hearing to determine whether that detention continues to be warranted.

With regard to her first argument, the Constitution requires DHS to carry a clear and convincing evidence burden in § 1226(a) bond hearings. *L.G. v. Choate*, 744 F. Supp. 3d 1172,

1186 (D. Colo. 2024). The Supreme Court "has consistently held *the Government* to a standard of proof *higher than a preponderance of the evidence* where liberty is at stake, and has reaffirmed a clear and convincing evidence standard for various types of civil detention." *Velasco Lopez*, 978 F.3d at 855 (emphasis added). The circuit courts that have meaningfully considered the constitutionality of placing the burden on the noncitizen in § 1226(a) bond hearings applied the three-factor balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Rodriguez-Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022); *Miranda v. Garland*, 34 F.4th 338, 359 (4th Cir. 2022); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez*, 978 F.3d at 851. That test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. A proper application of that test demonstrates that the Constitution requires the government to bear a clear and convincing evidence burden in § 1226(a) bond hearings. *See L.G.*, 744 F. Supp. 3d at 1185; Pet. at ¶¶ 59-74.

With regard to her second argument, even if one assumes, *arguendo*, that Ms. Batz's original bond hearing was adequate, she is entitled to a new bond hearing because her detention has become unconstitutionally prolonged. The District of Colorado has adopted a six-factor test to consider whether detention is unconstitutionally prolonged under a related statute, § 1226(c). Those factors include:

a. the total length of detention to date;
b. the likely duration of future detention;

c. the conditions of confinement
d. delays in removal proceedings caused by the person in immigration custody;
e. delays in removal proceedings caused by the government; and
f. the likelihood that removal proceedings will result in a final order of removal.

See, e.g., *Martinez v. Ceja*, 760 F. Supp.3d 1188 (D. Colo. 2024); *de Zarate v. Choate*, 2023 WL 2574370 (D. Colo. Mar. 20, 2023). As discussed in detail in her habeas petition, each of those factors weigh in Ms. Batz's favor. *See* Pet. at ¶¶ 84-95.

Ms. Batz is therefore likely to succeed on the merits of her petition and this factor also weighs heavily in her favor.

III. The Balance of Equities and Public Interest Weigh Heavily in Ms. Batz's Favor.

The third and fourth factors tip strongly in Ms. Batz'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). A court considering a preliminary injunction "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*, 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"). Ironically, all "interested parties [would] prevail" if this Court were to grant this preliminary injunction because ICE "has no interest in the continued incarceration of an individual who it

cannot show to be either a flight risk or a danger to the community." *Velasco Lopez*, 978 F.3d at 857.

Here, the balance of harms and public interest both weigh heavily in Ms. Batz's favor. DHS continues to violate Ms. Batz's liberty interest by confining her under abhorrent conditions under which her physical and mental health will inevitably deteriorate. *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).

The suffering Ms. Batz experiences is particularly egregious given that Respondents have never provided her a constitutionally adequate bond hearing at which DHS was required to show by clear and convincing evidence that Ms. Batz's continued detention is justified. *Demore v. Kim*, 538 U.S. 510, 532–33 (Kennedy, J., concurring) (recognizing that the only permissible purpose of immigration detention is to prevent flight and dangers to the community). Nevertheless, any alleged concerns raised by Respondents about flight risk or danger are ameliorated through the imposition of minimal supervision requirements that do not require Ms. Batz'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 civil detainees and ensure that they are present at removal proceedings, including remote monitoring and routine check-ins) (emphasis in original); *Hernandez*, 872 F.3d at 991 (observing that one of ICE's ATD programs, the Intensive Supervision Appearance Program, "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings").

DHS regularly decides not to detain individuals in removal proceedings. According to one source, as many as 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.[4] Similarly, EOIR's non-detained docket far exceeds the number of cases on its detained docket and transferring Ms. Batz's case would not be burdensome. At the end of August 2025, nearly 3.5 million cases were pending before U.S. immigration courts.[5] In contrast, as of September 7, 2025, ICE held 58,766 people in custody.[6] Even assuming every person in ICE custody has a case pending before EOIR, that would mean that less than one percent of cases currently pending before EOIR are on a detained docket.

Given there is no countervailing government or public interest in Ms. Batz's continued detention, she makes a strong showing that both the balance of harms and the public interest weigh in her favor.

CONCLUSION

Based on the foregoing, Ms. Batz respectfully requests that this Court grant the motion for a temporary restraining order compelling Respondents to afford her a constitutionally adequate bond hearing within seven days. In the alternative, Ms. Batz asks this Court to order Respondents to show cause and respond to Ms. Batz's habeas petition within 14 days of the Court's order, with 7 days for Ms. Batz to reply.

Dated: September 25, 2025

Respectfully submitted,

/s/ James D. Jenkins
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[4] Congressional Research Service, *Immigration: Alternatives to Detention (ATD) Programs*, July 8, 2019, *available at*: https://fas.org/sgp/crs/homesec/R45804.pdf
[5] TRAC Immigration, *Immigration Court Quick Facts*, available at: https://tracreports.org/phptools/immigration/backlog/.
[6] TRAC Immigration, *Immigration Detention Quick Facts*, *available at*: https://trac.syr.edu/immigration/quickfacts/detention.html.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's CM/ECF system on Sept. 25, 2025, and that a true copy was served pursuant to Fed. R. Civ. P. 4(i) via Certified U.S. Mail, sent Sept. 25, 2025 to the Respondents at the following addresses. A courtesy copy was sent to Kevin Traskos, U.S. Attorney's Office for the District of Colorado, at kevin.traskos@usdoj.gov.

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