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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

EARLIN ORANDE AHINSHA RICHARDS,

***Petitioner*,**

v.

JOHNNY CHOATE,
in his official capacity as warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.;

JAMISON MATUSZEWSKI,
In his official capacity as Interim Field Office Director, Denver, U.S. Immigration & Customs Enforcement;

KRISTI NOEM,
in her official capacity as Secretary, U.S. Department of Homeland Security;

TODD M. LYONS,
in his official capacity as Acting Director of Immigration & Customs Enforcement (ICE); and

PAMELA BONDI,
in her official capacity as Attorney General, U.S. Department of Justice.

Respondents.

Case No. 25-cv-3134

PETITIONER'S MOTION FOR A TEMPORARY RESTRAING ORDER

INTRODUCTION

Petitioner, Earlin Richards ("Mr. Richards"), moves for a temporary restraining order and preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65 against Johnny Choate, in his official capacity as Warden of the Aurora Contract Detention Facility[1] ("Aurora facility"); Jamison Matuszewski, in his official capacity as Interim Denver Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO") Field Office Director; Kristi Noem, in her official capacity as Secretary of the United States Department of Homeland Security ("DHS"); Todd M. Lyons, in his official capacity as Acting Director of Immigration & Customs Enforcement; and Pamela Bondi, in her official capacity as the Attorney General of the United States Department of Justice. In the alternative, should the Court deny Mr. Richards's request for injunctive relief, at a minimum it should order Respondents to show cause within seven days establishing why Mr. Richards's habeas petition should not be granted.

As of this writing, a neutral arbiter has never reviewed DHS's decision to incarcerate Mr. Richards, despite being detained for the past 210 days, and there is no timeline for his release. Mr. Richards's detention is likely to continue indefinitely absent intervention from this Court.

FACTUAL BACKGROUND

DHS incarcerated Mr. Richards nearly seven months ago yet fails to establish a legitimate purpose for his prolonged detention. DHS's decision to keep Mr. Richards incarcerated—now for 210 days—is unconstitutional. As detailed in Mr. Richards's Petition for Writ of Habeas Corpus, he now seeks judicial review of DHS's choice to continue his unlawful detention and is likely to

[1] The Aurora facility is also referred to as the Denver Contract Detention Facility. These names are used interchangeably by DHS, and both refer to the facility located a 3130 N. Oakland Street, Aurora, Colorado, 80010.

succeed on the merits of his petition. He requests this Court order his immediate release or, in the alternative, that he be presented before a neutral adjudicator within seven days of this Court's order to determine whether her continued incarceration serves a legitimate purpose.

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. *Dine 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. Mr. Richards Will Suffer Irreparable Harm in the Absence of a Temporary Restraining Order.

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

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

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *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.[2] Nevertheless, individuals like Mr. Richards 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.[3] 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.[4]

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[2] *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.

[3] 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/.

[4] *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

Mr. Richards's continued detention is an ongoing violation of his constitutional rights, and his deprivation of liberty is, by any measure but particularly under the circumstances, substantially detrimental to his well-being. Intervention from this Court is necessary to prevent further harm. This factor therefore weighs heavily in Mr. Richards's favor.

II. Mr. Richards Has a Substantial Likelihood of Success on the Merits of His Underlying Petition.

When assessing this prong of the test, the appropriate standard is a "reasonable likelihood" of success and nothing more. *Dine Citizens Against Ruining Our Environment*, 839 F.3d at 1282. Here, Mr. Richards's claim is likely to succeed because his continued detention without neutral review contravenes due process.

First, courts within this district and across the country have routinely held that individuals DHS detains for an excess of six months without neutral review violates the Constitution. *See Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1193 (D. Colo. 2024); *de Zarate v. Choate*, No. 23-cv-00571 (PAB), 2023 WL 2574370, at *3-*4 (D. Colo. March 20, 2023); *Daley v. Choate,* No. 22-cv-03043 (RM), 2023 WL 2336052, *2-*4 (D. Colo. Jan. 6, 2023); *Sheikh v. Choate*, No. 22-CV-01627 (RMR), (D. Colo. July 27, 2022); *Singh v. Garland*, No. 21-CV-00715 (CMA), 2021 WL 2290712, at *4 (D. Colo. June 4, 2021); *Villaescusa-Rios v. Choate*, No. 20-CV-03187 (CMA), 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021); *Singh v. Choate*, No. 19-CV-00909 (KLM), 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019); *Banda v. McAlleenan*, 385 F. Supp. 3d 1099, 1106

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,"[4] (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.

(W.D. Wash. 2019); *Jamal v. Whitaker*, 358 F. Supp. 3d 853, 858059 (D. Minn. 2019); *Joseph v. Decker*, No. 18-CV-2640 (RA), 2018 WL 6075067, at *10–11 (S.D.N.Y. Nov. 21, 2018) (collecting cases from the Southern District of New York); *Fatule-Roque v. Lowe*, No. 17-1981, 2018 WL 3584696, at *5 (M.D. Penn. July 26, 2018) (collecting cases from the Middle District of Pennsylvania).

Moreover, following *Zadvydas* and *Demore*, federal circuit courts to consider the issue of an immigrant's prolonged detention found that Fifth Amendment right to due process imposes a temporal limitation on mandatory detention—either pursuant to the Due Process Clause itself or to avoid serious constitutional concerns. *See Black v. Decker*, 103 F.4th 133, 145 (2d Cir. 2024) ("[W]e nonetheless read *Zadvydas, Demmore,* [and] *Jennings* . . . to suggest strongly that due process places *some* limits on detention under section 1226(c) without a bond hearing.") (emphasis in original); *German Santos v. Warden Pike Cty. Corr. Fac.*, 965 F.3d 203, 209 (3d Cir. 2020) (holding that at a certain point, "due process requires the Government to justify continued detention at a bond hearing" for a petitioner detained under § 1226(c)) (internal citations and quotations omitted) (citing *Chavez-Alvarez v. Warden*, 783 F.3d 469, 478 (3d Cir. 2015); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (expressing "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's deprivation of liberty would have thought so"); *Reid v. Donelan*, 819 F.3d 486, 500 (1st Cir. 2016) ("The concept of a categorical, mandatory, and indeterminate detention raises severe constitutional concerns").

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

III. Balance of Equities and Public Interest Weigh Heavily in Mr. Richards's Favor.

The third and fourth factors tip strongly in Mr. Richards'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); *Bd. of Cty. Commissioners of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, No. 18-CV-01672 (WJM-SKC), 2019 WL 4926764, *7 (D. Colo. Oct. 7, 2019). 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*, 129 S. Ct. at 376. "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*, 237 F. Supp. 3d at 1134 (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)). 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 Mr. Richards's favor. DHS continues to violate Mr. Richards's liberty interest while he is separated from his family, and unable to work. *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 Mr. Richards experiences is particularly egregious given Respondents never provided him a constitutionally adequate bond hearing at which DHS was required to show by clear and convincing evidence that Mr. Richards's continued detention is justified. *See Demore v. Kim*, 538 U.S. 510, 532–33 (Kennedy, J., concurring) (recognizing that the only permissible purpose of civil, 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 Mr. Richards's indefinite detention. *See Thakker v. Doll*, 451 F.Supp.3d 358, 371 (M.D. Pa. 2020) ("We note that ICE has a plethora of means other than physical detention at their disposal by which they may monitor [persons civilly detained] and ensure that they are present at removal proceedings, including remote monitoring and routine check-ins."); *Hernandez*, 872 F.3d at 991 (observing that one of ICE's 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. Approximately 98 percent of people subject to removal proceedings are not incarcerated by DHS, thus, the agency has extensive experience monitoring people who have pending immigration cases.[5]

Similarly, EOIR's non-detained docket far exceeds the number of cases on its detained docket and transferring Mr. Richards's case would not be burdensome. At the conclusion of the

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

first quarter of FY2022, over 1.5 million cases were pending before U.S. immigration courts.[6] In contrast, as of April 24, 2022, ICE held 19,502 people in custody. TRAC Immigration, *Immigration Detention Quick Facts*.[7] Even assuming every person in ICE custody has a case pending before EOIR, that would mean only about 1.3 percent of cases currently pending before EOIR are on a detained docket.

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

CONCLUSION

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

Dated: October 6, 2025

Respectfully submitted,

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[6] Congressional Research Service, *U.S. Immigration Courts and the Pending Cases Backlog*, April 25, 2022, *available at*: https://crsreports.congress.gov/product/pdf/R/R47077.

[7] TRAC Immigration, *Immigration Detention Quick Facts*, *available at*: https://trac.syr.edu/immigration/ quickfacts/.

VERIFICATION

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

Dated: October 6, 2025

CERTIFICATE OF SERVICE

I, Michael Z. Goldman, hereby certify that on September 25, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Michael Z. Goldman, hereby certify that I have mailed a hard copy of the document to the individuals identified below via certified mail on October 6, 2025.

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