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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-03242

VENG VANG,
Petitioner
v.
JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT GAUDIAN, 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

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

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

I. Factual Background.

Defendants continue to jail Mr. Vang despite the statutory authority granting them the ability to do so lapsing 4780 days ago. An immigration judge ("IJ") ordered Mr. Vang removed on June 14, 2012. Ex. 2. 92 days later, Defendants released Mr. Vang from custody because it could not physically effectuate his removal from the United States. Ex. 4; Ex. 5. In so doing, Defendants acknowledged that Mr. Vang's removal was not significantly likely in the reasonably foreseeable future and that he was neither a risk of flight nor a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (discussing that flight and danger are the only two justifications for immigration detention post-final order); *Lopez v. Sessions*, 18-cv-4189 (RWS), 2018 WL 2932726, at *12 (SDNY 2018) (acknowledging that the OSUP release process involves a determination that the noncitizen is neither a flight risk nor danger); Ex. 5. ICE released Mr. Vang on an Order of Supervision ("OSUP") on September 14, 2012, Ex. 4; Ex. 5. He was thereafter required to periodically report to ICE. Ex. 4. Mr. Vang's release paperwork acknowledged that ICE would continue to try and secure travel documents for his physical removal and that ICE would give him "the opportunity to prepare for an orderly departure" once it had those documents. Ex. 5.

Mr. Vang obliged by the terms of his OSUP for the next thirteen years. He was required to physically report to ICE a few times a year until ICE determined he needed to only physically report once a year; he did so without fail.[1] While at liberty Mr. Vang established himself as a valuable member of his community. He owns his own home and has worked at the same construction company for 13 years. He is now a supervisor for the company on the night shift and still has a job waiting for him if released. He also raised his three U.S. citizen children, aged four, eight, and twelve. He is engaged to a U.S. citizen and supported her along with his children until ICE took him back into custody on July 8, 2025.

While in the community for thirteen years, Mr. Vang largely avoided criminal legal contact. The limited exceptions were two arrests for driving while ability impaired, one in 2016 and in a second in 2024.[2] Otherwise, his time on an OSUP was unblemished and Mr. Vang understood from his release notification accompanying the OSUP paperwork that ICE would give him "the opportunity to prepare for an orderly departure" after securing his travel documents. Ex. 5.

Nevertheless, an ICE Supervisory Deportation Officer ("SDDO") ordered ICE to reincarcerate Mr. Vang on July 6, 2025. Ex. 8, 2025 ICE Warrant for Arrest. ICE officers fulfilled that order on July 8, 2025 when they stopped Mr. Vang while he was driving his car to pick up his fiancé at the airport. *See id.* ICE did not provide him with advanced notice of its intent to revoke his OSUP and it did not provide him with a reason for its revocation beyond the fact that he has a

[1] The only exception was when Mr. Vang proactively called ICE to report during the first year of COVID. ICE considered his phone call as his check-in for that year.

[2] Of note, Mr. Vang checked in with ICE pursuant to his OSUP after each of these arrests, the most recent check-in being on January 15, 2025. ICE did not revoke his OSUP after either arrest. Rather, the only reason he was given in July of 2025 for the OSUP revocation was that he had a final order of removal. The arrests were not mentioned. Mr. Vang successfully completed probation for the 2016 case and ICE arrested him while still on probation for the 2024 case. Neither case involved accidents, flight from authority, injury, or other aggravating circumstances.

final order of removal. ICE also did not give Mr. Vang an opportunity to present evidence or argument as to why his reincarceration was unnecessary. Rather, ICE forced him to pull over on the side of the road, asked for his driver's license, and then told him there was a warrant for his arrest. Mr. Vang has not been at liberty since and ICE has not provided him with any process to contest his reincarceration and revocation of his OSUP.

Upon information and belief, the official responsible for revoking Mr. Vang's OSUP did not first refer the case to the ICE Executive Associate Director, did not make a finding that revocation was in the public interest, and did not make a finding that circumstances did not reasonably permit referral to the Executive Associate Director. Also upon information and belief, the person that revoked Mr. Vang's OSUP was not a delegated authority to revoke an OSUP, but rather a SDDO who signed a warrant for Mr. Vang's arrest on July 6, 2025. Ex. 8.

ICE once again incarcerated Mr. Vang at the Aurora Facility. ICE did not have a travel document for Mr. Vang prior to incarcerating him. In fact, ICE told undersigned counsel 14 days after it reincarcerated him that it was still in the process of obtaining a travel document, confirmation of which is confirmed by ICE's own documents. *E.g.*, Ex. 6. For example, its EARM paperwork, produced on August 25, 2025, acknowledges that Mr. Vang's removal order had been final for 4820 days and that it still cannot proceed with removal because ICE is "[a]waiting travel documents." *Id.* Notably, ICE answers the question of whether it can "[p]roceed with removal" in the negative. *Id.*

Mr. Vang cooperated with ICE on July 27, 2025 to apply for a travel document from Thailand. ICE has not asked Mr. Vang to cooperate in the application for a travel document from any other country. ICE has not explained to Mr. Vang why it revoked his OSUP beyond saying he has a final order of removal nor has it given him an opportunity to respond to that reason. ICE has

not provided him with a single custody review since his reincarceration. ICE has not given him the opportunity to establish why his continued incarceration is unnecessary. ICE acknowledges that it cannot remove Mr. Vang because it does not have a travel document. Ex. 6.

As of today, Mr. Vang has been deprived of his liberty at the Aurora Facility for the past 98 days and 190 days in the aggregate since his removal order became final 4870 days ago.

II. Legal Standard for Granting Preliminary Relief.

Mr. Vang shows he is entitled to preliminary relief as (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 unconstitutional confinement.

III. Legal Argument – The Court Should Order Preliminary Relief

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

ICE's decision to once again strip Mr. Vang of his liberty is unlawful. It violates the statute, constitution, regulations, Administrative Procedures Act ("APA"), the *Accardi* doctrine, and is Ultra Vires. He is likely to succeed in his petition and the Court should grant this Motion.

i. *Mr. Vang's Ongoing Incarceration Violates the Statute.*

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 INA provides, in relevant part, that the removal period begins on the latest of the following dates: "(i) The date the order of removal becomes administratively final; or (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order." 8 U.S.C. § 1231(a)(1)(B)(i)–(ii).

The Supreme Court adopted a "presumptively reasonable period of detention" of six months when reviewing someone's loss of liberty after a final order of removal. *Zadvydas*, 533 U.S. at 701. 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." *Id.* ICE's administrative regulations also recognize that the Headquarters Post-Order Detention Unit ("HQPDU") has a six-month period for determining whether there is a significant likelihood of a noncitizen's removal in the reasonably foreseeable future. 8 C.F.R. § 241.4(k)(2)(ii).

"[F]or detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. Mr. Vang presents "good reason" to believe that his removal is not significantly likely in the reasonably foreseeable future. *E.g.*, Ex. 6. In addition to his 190 days incarcerated and 4870 days since his removal order was final, ICE acknowledges its inability to remove Mr. Vang and that it does not have travel documents to do so. *Id.* Mr. Vang therefore met his threshold burden to show removal is not reasonably foreseeable; ICE must now release Mr. Vang unless it can rebut that showing. *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 v. INS*, 418 F.3d 1116, 1124 (10th Cir. 2008) ("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 v. Fabbricatore*, 21-CV-02037-RMR, 2021 WL 9385836 (D. Colo. Sep. 9, 2021) (same).

ICE cannot avoid that responsibility and 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); *See Morales-Fernandez*, 418 F.3d at 1123; *Nzayikorera*, 2021 WL 9385836 at *2. "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." *Farez-Espinoza*, 600 F. Supp 2d at 502; *Morales-Fernandez*, 418 F.3d at 1123. It is "the responsibility of [ICE] to make a bona fide attempt to do so within the removal period." *Id.* When ICE does not fulfill its responsibility, § 1231(a)(1)(C) does not apply. *Nzayikorera*, 2021 WL 9385836, at *2 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute") (citation and quotations omitted); *Farez-Espinoza*, 600 F. Supp. 2d at 502).

Moreover, 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. *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). The statute is unambiguous: the removal period begins and stops in limited circumstances, 8 U.S.C. § 1231(a)(1)(A), (B), (C), and ICE cannot restart the period when it lapsed long ago, such as the near 13-year lapse in this case. *Tadros v. Noem*, No. 25-cv-4108 (EP), 2025 WL 1678501, at *3 (D.NJ June 13, 2025); *Farez-Espinoza*, 600 F. Supp. 2d at 499; *Uylsee*, 291 F.Supp.2d at 1325–26; *Diaz-Ortega*, 2019 WL 6003485 at *9–10.

The removal period expired 4780 days ago; ICE's inability to remove Mr. Vang is evidenced by his 190 days of incarceration, the 4870 days since his removal order was final, the 4780 days since the removal period expired, and its own admission. Ex. 6. ICE must release Mr. Vang forthwith. *Zadvydas*, 533 U.S. at 699–700.

ii. ICE's Reincarceration of Mr. Vang Violates Procedural Due Process.

Alternatively, this Court must order Mr. Vang's release because ICE did not provide Mr. Vang with procedural due process when it decided to re-jail him despite knowing his removal is not significantly likely in the reasonably foreseeable future.

"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. Vang'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. Vang's has a protected liberty interest even though he was "subject to extensive conditions of release . . . ." *Guillermo M.R. v. Kaiser*, --- F.Supp.3d ---, 2025 WL 1983677, at *4 (N.D.Ca. Jul. 17, 2025) (citation omitted); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). In *Morrissey v. Brewer*, the Supreme Court addressed for the first time whether an individual had a constitutionally protected liberty interest in parole after criminal conviction and, if so, the procedures required before that interest may be terminated. 408 U.S. 471 (1972). The Court found that "the liberty of a parolee, although indeterminate, includes many of the core values of

unqualified liberty and its termination inflicts a grievous loss on the parolee and often on others." *Id.* at 482 (citation and quotation omitted). In its ruling, the Court examined the "nature of the interest of the parolee in his continued liberty," finding that this interest included the ability "to do a wide range of things open to persons who have never been convicted of any crime," to seek gainful employment, and "to be with family and friends and to form the other enduring attachments to normal life." *Id.* 481–82.

Given these factors, the Court held that the parolee's liberty came "within the protection of the Fourteenth Amendment." *Id.* at 489. He was therefore entitled to the minimum due process protections of: "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole." *Id.*

Federal courts have since held that several types of government-created liberty interests are entitled due process protection. *E.g.*, *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973) (revocation of probation without due process is a deprivation of a protected liberty interest); *Young v. Harper*, 520 U.S. 143 (1997) (revocation of pre-parole conditional supervision program is a deprivation of a protectable liberty interest); *U.S. v. Sanchez*, 225 F.3d 172, 175 (2d. Cir. 2000) (revocation of supervised release is a liberty interest entitled due process); *United States v. Higgs*, 731 F.2d 167 (3d Cir. 1984) (denial of bail following jury verdict is a deprivation of protected liberty interest); *Chhoen v. Marin*, 306 F.Supp.3d 1147 (C.D.Cal. 2018) (issuing a preliminary

injunction prohibiting the government from removing people it re-detained after originally releasing them years earlier without providing procedural remedies to seek release and relief from removal).

Here, "[g]iven the civil context, [Mr. Vang's] liberty interest is arguably greater than the interest of the parolees in *Morrissey*." *Guillermo M.R.*, 2025 WL 1983677, at *4 (citation omitted). Moreover, ICE jails Mr. Vang 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. Vang's favor.

Second, the risk of erroneous deprivation of Mr. Vang's liberty interest is significant because ICE's decision to re-jail Mr. Vang lacked *any procedures* at all, and ICE has not provided Mr. Vang with *any process* since his reincarceration. *E.g.*, *Lopez*, 2018 WL 2932726, at *11 (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. Vang who ICE jails pursuant to § 1231(a). *Guillermo M.R.*, 2025 WL 1983677, at *5. 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. Vang 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. Vang 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. Vang without notice, without cause, and without an interview after having released him almost thirteen years ago does not address the government's purported interest and reeks of arbitrariness. *Lopez*, 2018 WL 2932726 at *12. This is especially true where—as here—the noncitizen "was released pursuant to a process that involved a determination that he was neither a danger to himself or others and" then re-detained "without prior notice, a showing of changed circumstances, or any meaningful opportunity to respond . . . ." *Id.* This factor therefore also weighs in his favor.

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.*, *Cifuentes Rivera v. Arnott, et al.*, 4:25-cv-00570-RK (W.D.Mo Oct. 7, 2025) (attached as Ex. 9); *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. Vang Violates Respondents' Binding Regulations.*

A noncitizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). The statute only permits ICE to jail the noncitizen past the 90-day removal period following a removal order if found to be a "risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. *Id.* § 1231(a)(6). Even where the initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention

unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the [noncitizen's] release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas*, 533 U.S. at 699–700.

Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-jailed 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").[3]

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).

The 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. at 161 (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); *Orellana v. Baker et al.*, 1:25-cv-01788-TDC (D.Md. Oct. 7, 2025) (attached as Ex. 10). If the field office director or a delegated official

[3] Whether Respondents rely on these additional reasons is unknown as they did not provide Mr. Vang with notice or reason for his reincarceration.

intend 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). 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 at 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). In other words, ICE's revocation of an OSUP is unlawful unless the proper official either conducts or explicitly approves the revocation. Courts have repeatedly held that ICE's failure to adhere to this requirement violates due process and mandates release. *E.g.*, *M.S.L. v. Bostock*, No. 25-cv-01204-AA, 2025 WL 2430267, at *9–10 (D. Or. Aug. 21, 2025); *Cordon-Salguero v. Noem*, No. 25-1626-GLR, Mot. Hr'g Tr. at 35–37 (D. Md. June 23, 2025) (attached as Ex. 11); *Rombot v. Souza*, 296 F.Supp.3d 383, 385, 387–88 (D. Mass. 2017).

The regulations also 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. Muniz*, --- F.Supp.3d ---, 2025 WL 2084102, * 1–2 (D.Mass. July 24, 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). Once jailed after the removal period, ICE must frequently consider whether continued incarceration is necessary, provide opportunities to the noncitizen to argue that it is not, and explain its reasoning to the noncitizen why continued incarceration is necessary. *See generally* 8 C.F.R. § 241.4.

"Government agencies are required to follow their own regulations." *Hoac*, 2025 WL 1993771, at *4. (citing *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). "[W]here an immigration regulation is promulgated to protect a fundamental right derived from

the Constitution or a federal statute, like the opportunity to be heard, and [ICE] fails to adhere to it, the challenged [action] is invalid . . . ." *Waldron v. I.N.S.*, 17 F.3d 551, 518 (2d Cir. 1993) (alterations in original). "[F]ailure to give [a noncitizen] meaningful notice of the basis for its revocation of his release violate[s] the regulation and due process." *Perez-Escobar*, 2025 WL 2084102, at *2 (citation omitted).

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

ICE's regulatory violations here are numerous. First, based on information and belief, Mr. Vang's OSUP was not revoked by the ICE Executive Associate Director and the officer that did revoke his OSUP did not make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. *See* Ex. 6. Second, ICE has not provided Mr. Vang with the reasons for its revocation. Third, ICE has yet to provide Mr. Vang with an opportunity to respond to the purported reasons for its OSUP revocation

in an interview. Fourth, ICE has not provided Mr. Vang with any custody reviews since his reincarceration. Fifth, ICE has not provided Mr. Vang with an opportunity to prepare for the non-existent custody reviews. ICE's decision to re-jail Mr. Vang is therefore invalid and this Court must order his release.

iv. *ICE's Revocation of Mr. Vang's OSUP Violated the APA.*

Under the APA a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A). Respondents' revocation of Petitioner's OSUP was arbitrary and capricious because it violated statute, regulation, and the Constitution. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

Respondents' decision to revoke Mr. Vang's OSUP ran counter to the evidence before the agency that Mr. Vang would comply with a demand to appear for removal without detention. Mr. Vang always appeared for his OSUP appointments and there are no new facts to suggest he would start failing to comply. The revocation also "failed to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

First, Respondents failed to consider the serious constitutional, statutory, and regulatory concerns raised by revoking Mr. Vang's OSUP without notice and opportunity to respond. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking Mr. Vang's OSUP, who is neither a flight risk nor a danger to the community and for whom it does not have a travel document. Indeed, prolonged incarceration for someone who is neither a risk to the community nor a risk of flight provides no benefit to the government. *Velasco Lopez v. Decker*, 978 F.3d 842, 856 (2d Cir. 2020) (noting that the Government prevails when it

releases noncitizens like Mr. Vang because "it has no interest in the continued detention of an individual who it cannot show to be either a flight risk or a danger to [the] community"). Third, Respondents failed to consider reasonable alternatives to revoking Mr. Vang's OSUP that were before the agency, like continuing release under the OSUP and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interest in effectuating a removal order and save it the expense of detention not needed to guarantee Mr. Vang's appearance. Fourth, Respondents failed to consider Mr. Vang's substantial reliance interest, created by its instruction on his release notification, that the agency would give Mr. Vang an opportunity to arrange for an orderly departure once it obtained travel documents. Ex. 5.ICE's reincarceration of Mr. Vang violates the APA.

In sum, Mr. Vang is likely to succeed on the merits of his petition. This factor therefore weighs in favor of granting relief. The rest of the factors do, as well.

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

Mr. Vang 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.[4] Nevertheless, years after the release of the OIG report individuals like Mr.

[4] *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;

Vang 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.[5] 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.[6] The harm Mr. Vang 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. Vang'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

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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.

[5] 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/.

[6] *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,"[6] (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.

hangs in the balance," it "usually trumps any harm to the defendant." *Free the Nipple-Fort Collins*, 916 F.3d at 806. *Cf. Awad*, 670 F.3d at 1131 ("[W]hen the law that voters wish to enact is likely unconstitutional, their interests do not outweigh [a Petitioner's interest] in having his constitutional rights protected"). The "public interest is best served by ensuring the constitutional rights of person within the United States." *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *13 (S.D.N.Y. 2018) (internal citation omitted); *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 237 F. Supp. 3d 1126, 1134, *aff'd*, 916 F.3d 792 (10th Cir. 2019) (It is "always in the public interest to prevent the violation of a party's constitutional rights") (quoting *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998)); *Stawser v. Strange*, 44 F. Supp.3d 1206, 1210 (S.D. Ala. 2015)). *See Adams ex rel. Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996) ("The public interest would be best served by enjoining the defendants from infringing on the plaintiff's right to equal protection"). On the other hand, the government cannot claim injury from an order enjoining unlawful action. *Wages & White Lion, Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021) ("There is generally no public interest in … unlawful agency action").; *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Here, the balance of harms and public interest both weigh heavily in Mr. Vang's favor. Defendants continues to violate Mr. Vang'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. Vang 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.[7] 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). Indeed, the government provided this structure to Mr. Vang for nearly thirteen years.

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

Finally, Mr. Vang'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.[8]

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

[8] 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.")

In sum, there is no countervailing government or public interest fueling Mr. Vang'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 release from custody. The Court should further enjoin the Defendants from transferring Mr. Vang outside the District of Colorado.

Dated: October 14, 2025

Respectfully submitted,

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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 and Victor Scarpato of the US Attorney's Office for the District of Colorado, regarding the relief requested herein. Defendants-Respondents oppose this motion.

/s/ Conor T. Gleason
Conor T. Gleason
Attorney for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on October 14, 2025 I filed the foregoing with the Clerk of Court using the CM/ECF system. I also emailed Kevin Traskos at Kevin.Traskos@usdoj.gov and Bill Scarpato at victor.scarpato@usdoj.gov a copy of the foregoing and will serve via certified mail within 48 hours or earlier pursuant to any forthcoming Court order to Respondents and their Representatives.

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