IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-03317

IMAN MOHAMED ALI,

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, in his official capacity
as warden of the Aurora Contract Detention Facility,

ROBERT GUADIAN, in his official capacity
as Field Office Director, Denver, U.S. Immigration and Customs Enforcement,

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

TODD LYONS, in his official capacity
as Acting Director of Immigration and Customs Enforcement,

PAMELA BONDI, in her official capacity
as Attorney General of the United States

Respondents-Defendants.

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner-Plaintiff, Iman Mohamed Ali ("Mr. Ali"), by and through his undersigned counsel ("Counsel"), hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief, and accompanying motion for a temporary restraining order, to prevent Respondents-Defendants, the Department of Homeland Security

("DHS") and Immigration and Customs Enforcement ("ICE") from continuing his unlawful detention.

2. Mr. Ali is a citizen of Somalia whose removal was deferred on March 29, 2019 when an immigration judge ("IJ") entered a final order or removal and simultaneously granted him legal protections afforded by the Convention Against Torture ("CAT"). Exh. A, IJ's Final Order. Despite this order prohibiting his removal to Somalia, without prior notice, officers for ICE arrested and detained Mr. Ali on July 23, 2025. Today, he remains unlawfully incarcerated at the ICE Aurora Contract Detention Facility ("Aurora facility") in Aurora, Colorado, a prison privately owned and operated by GEO Group, Inc.

3. ICE previously incarcerated Mr. Ali for thirteen months—between February 2018 and March 2019—pending resolution of his immigration case. After Mr. Ali prevailed on his fear-based claim on March 29, 2019, ICE detained him for three more months, until June 26, 2019, before releasing him on an order of supervision ("OSUP").

4. Mr. Ali is married to a U.S. citizen and together they have two sons, one of whom is a senior in high school and the other graduated last year. He has an older U.S. citizen son from a prior relationship who is currently serving in the U.S. military and is the father of Mr. Ali's grandson. Mr. Ali also has a stepdaughter and granddaughter, with whom he is very close. Each of the four children and two grandchildren are U.S. citizens. Mr. Ali's parents are also U.S. citizens, as are his siblings.

5. Mr. Ali has various psychiatric, cognitive, neurological, and physical disabilities. At various points, he has been diagnosed with schizophrenia, bipolar disorder with psychotic features, post-traumatic stress disorder ("PTSD"), and anxiety. A psychiatric evaluation

performed on January 26, 2019, by Dr. Ashley Curry diagnosed him with Bipolar II disorder with psychotic features, as well as PTSD. Mr. Ali has been medicated for symptoms associated with these conditions—including visual and auditory hallucinations and feelings of paranoia. In 2018, while detained, he was also diagnosed with multiple sclerosis, a chronic and degenerative autoimmune disease that affects the central nervous system, including the brain and spinal cord. He reports limited mobility where his joints lock up and he experiences severe pain in his spine and neck as well as bouts of impaired vision. He also had a case of Bell's Palsy during his prior detention, where he endured temporary weakness on one side of his face. He required multiple hospitalizations for these medical conditions during his prior detention, though while in ICE custody, he did not receive the follow-up care ordered by the hospital physicians.

6. Additionally, Mr. Ali has a traumatic brain injury ("TBI") from a car accident that occurred on March 14, 2014 when he was the passenger in a vehicle that was struck and catapulted into a tree. He had to be resuscitated by medics who arrived on the scene. In addition to his brain injury, the crash shattered Mr. Ali's left hip and pelvis, requiring multiple surgeries. In a separate incident, Mr. Ali broke his kneecap and there is currently a screw loose in his knee that is causing him severe and chronic pain as well as limited mobility.

7. On July 23, 2025, without prior notice, masked ICE officers arrested Mr. Ali. They told him, "We are going to take you to GEO,[1] and you'll be gone in a week." Mr. Ali reports that he did not receive any documents explaining why ICE was taking him into custody, nor did he receive a custody interview at any point. After weeks in detention, officials from ICE paid Mr. Ali a visit and asked him to fill out a travel document to Somalia. He declined, given he

[1] This is a colloquial term for the Aurora facility.

had won protection against deportation to that country and it would be unlawful for the U.S. government to send him there. The officials then asked, "How do countries like Kenya and Uganda sound to you?" Mr. Ali did not know how to respond. Subsequently, ICE confirmed with Mr. Ali's Counsel that they are working to secure a third country that might accept him for removal.

8. Mr. Ali's detention is unlawful. Specifically: (1) Mr. Ali's detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), given there is not a substantial likelihood that DHS can carry out his removal in the reasonably foreseeable future; (2) Mr. Ali cannot be removed to a third country in the reasonably foreseeable future because he first must receive notice and a meaningful opportunity to present a claim for fear-based protection; (3) ICE detained Mr. Ali without notice or opportunity to be heard, based on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules; and (4) Mr. Ali is an individual with a disability protected by the anti-discrimination requirements of Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794, and his confinement is preventing him from meaningfully accessing a government program or benefit, requiring release as a reasonable accommodation.

9. Mr. Ali petitions this Court to issue a writ of habeas corpus, ordering Respondents to show cause within three days, providing their reasons, if any, why his detention is lawful. 28 U.S.C. § 2243. He further requests that this Court grant his petition and order his immediate release subject to any conditions this Court believes are appropriate and necessary because his continued detention is unlawful; or at a minimum, a custody hearing conducted by a neutral

adjudicator. Finally, Mr. Ali asks this Court for an order that prohibits Respondents from transferring him outside of the District of Colorado.

JURISDICTION AND VENUE

10. Mr. Ali currently is detained under 8 U.S.C. § 1231(a) in Respondents' custody at the Aurora facility. This case arises under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105–277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 794.

11. This Court has jurisdiction under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas authority); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

12. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687.

13. This Court has jurisdiction to grant declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); FED. R. CIV. P. 57, 65; as well based on its inherent authority to grant equitable relief. *See, e.g.*, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

14. Venue is proper under 28 U.S.C. § 1391 because Mr. Ali is detained in the Aurora facility within the jurisdiction of this Court. *See* 28 U.S.C. § 2241(d); *Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973). Venue is also proper because at least one of the Respondents is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this District. 28 U.S.C. § 1391.

PARTIES

15. Mr. Ali is a 42-year-old citizen of Somalia who won CAT protection on March 29, 2019. Exh. A at 2. ICE initially detained him in February 2018. At the conclusion of his removal proceedings, an IJ ordered Mr. Ali removed but deferred his removal to Somalia upon finding that he had demonstrated a likelihood of future torture there, either by the government or with its acquiescence. Three months later, ICE released him from detention. Without prior notice, ICE arrested Mr. Ali on July 23, 2025, and subsequently detained him at the Aurora facility, where he remains today. It is unlawful for ICE to remove Mr. Ali to Somalia, and the agency has not shown that it has secured travel documents to any other country. Even if it were to do so, Mr. Ali has a right to seek fear-based protection against deportation. Mr. Ali's order of removal became final more than six and a half years ago and ICE has not made a showing that it will be able to remove him in the reasonably foreseeable future.

16. Respondent Juan Baltazar is named in his official capacity as the warden of the Aurora facility, where Mr. Ali is detained, and is therefore his legal custodian.

17. Respondent Robert Guadian is named in his official capacity as the Acting ICE Denver Field Office Director. The Denver Field Office is responsible for carrying out ICE's

immigration detention operations at all of Colorado's detention centers. Respondent Guadian is a legal custodian of Mr. Ali.

18. Respondent Kristi Noem is named in her official capacity as the Secretary of the Department of Homeland Security ("DHS"). She is responsible for the administration of U.S. immigration law and is legally responsible for the process of Mr. Ali's detention and removal. As such, she is a legal custodian of Mr. Ali.

19. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for the decisions related to the detention and removal of certain noncitizens, including Mr. Ali. As such, he is a legal custodian of Mr. Ali.

20. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of Colorado and is legally responsible for administering Mr. Ali's removal and bond proceedings as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Mr. Ali.

EXHAUSTION OF REMEDIES

21. Petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. This Court has ruled that "exhaustion is not required in the immigration context when it would be futile...or when 'the interests of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own authority.'" *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000)).

22. Although exhaustion is not required, it would be futile in this case because Mr. Ali's claims cannot be meaningfully addressed or remedied through the administrative process. Mr. Ali is detained under 8 U.S.C. § 1231(a) and thus cannot request a custody redetermination hearing before an IJ. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022). Moreover, neither an IJ nor the Board of Immigration Appeals ("BIA") can rule on constitutional claims. *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."). There are no further remedies to exhaust.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Background

23. Mr. Ali was born in 1983 in Somalia. In 1991, the president of Somalia, Siad Barre, was forced into exile, and the country broke into civil war. Several factions of warlords attempted to take control of the country. Mr. Ali's family suffered extreme human rights abuses at the hands of the warlords. Because of their tribal lineage, many of Mr. Ali's relatives were killed. To avoid this fate, Mr. Ali's father chose to flee to Ethiopia in 1995. They lived there for a year in a refugee camp before being granted refugee status in the United States, arriving in March 1996.

24. From March 1996 to 2000, Mr. Ali and his family lived in San Diego, California. In 2000, Mr. Ali's father took a job with the United States Postal Service in Denver, Colorado, and Mr. Ali moved there with him. The rest of the family stayed behind. In Denver, Mr. Ali started high school. Soon after, his father moved back to San Diego. Mr. Ali wanted to stay in Denver, so his father paid a friend to give Mr. Ali room and board. His father's friend practiced a

strict version of Islam and did not tolerate Mr. Ali's western lifestyle. Mr. Ali suffered poor treatment for five months before finally deciding to leave that home. After spending a couple months in shelters and on friends' sofas, Mr. Ali settled in with another Somali immigrant. However, his unstable living situation made it impossible for him to finish high school.

25. In 2002, when Mr. Ali was just nineteen years old, police discovered a small quantity of drugs on him after his friend sold cocaine to an undercover police officer for forty dollars. The friend had given Mr. Ali twenty dollars. As a result of this incident, he was convicted of unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance in violation of Colo. Stat.§ 18-18-405.

26. In 2004, Mr. Ali was convicted of third-degree assault under Colo. Stat. §18-3-204, resulting in a sentence of eighteen months, and felony menacing under Colo. Stat. §18-3-206(l)(a)/(b), resulting in a sentence of four years. Both of these convictions stemmed from a single incident that occurred in September 2003. There was no physical harm involved in this incident, and it was not reported until several days after it occurred. Mr. Ali was not represented by the public defender, because he was a codefendant, and the public defender told him there would be a conflict of interest. A private attorney was therefore appointed. This attorney advised Mr. Ali to accept a plea bargain, saying it would reduce his sentence to probation, which turned out not to be the case. That attorney subsequently had his license suspended due to ethical issues.

27. In 2005, while Mr. Ali was on parole, he met his future wife, a U.S. citizen and devout Christian. The following year, they had their first son. Subsequently, Mr. Ali had to return to jail. During this period of incarceration, he began attending Bible study groups and became a born-again Christian. After being released from prison, Mr. Ali told his parents that he

had converted to Christianity and was disowned by his family, who are Muslim. In 2008, Mr. Ali and his wife had a second son. Both of their boys were baptized in the church where Mr. Ali and his wife later got married. In 2012, Mr. Ali was anointed with the Holy Spirit to confirm his acceptance of Jesus as his Savior. He had a job as an electrician and was working hard to support his family.

Initial Immigration Arrest and Removal Order in 2013

28. In February 2013, ICE officers arrested Mr. Ali at his home, detained him, and placed him in removal proceedings. Mr. Ali did not submit any applications for relief because he was told that he did not qualify for anything. On May 2, 2013, the Aurora Immigration Court issued an order of removal. However, Mr. Ali was not removed. He remained detained until August 2013 and then was released under the condition of regular check-ins with ICE.

Redetention by ICE in 2018, Reopened Removal Proceedings, and Grant of Deferral of Removal under the Convention Against Torture

29. During a routine check-in with ICE on February 14, 2018, Mr. Ali was again taken into custody. He was then transferred to several different immigration detention facilities. From February 23, 2018, to March 2, 2018, Mr. Ali was detained at the West Texas Detention Facility (WTDF) and then moved to the Coastal Bend Detention Center in Robstown, Texas. Mr. Ali was scheduled for deportation to Somalia on March 29, 2018, but received an emergency stay of removal from the Aurora Immigration Court. In April 2018, he was transferred to the Aurora facility.

30. On April 27, 2018, Mr. Ali filed a motion to reopen with the Immigration Court based on changed country conditions in Somalia. The IJ reinstated the stay of removal on April 30, 2018, effective until the Court ruled on the motion. On May 9, 2018, the IJ denied the

motion, and Mr. Ali appealed. On October 31, 2018, the BIA reversed the IJ's decision, granting the motion to reopen and remanding the case.

31. At that point, Mr. Ali was still detained in Aurora. During his detention there, his mental and physical health deteriorated.

32. In his remanded removal proceedings, Mr. Ali applied for withholding of removal, as well as deferral of removal under the CAT. His claim was based on his fear of persecution and torture in Somalia on account of his religion, as a convert to Christianity, as well as on account of his actual or imputed political opinion, based on evidence that extremist groups in Somalia, such as Al Shabaab and ISIS, routinely torture and kill those viewed as aligned with western governments and ideologies. He also argued that he was at risk of being persecuted and tortured due to his mental and physical disabilities.

33. On March 29, 2019, the IJ granted him deferral of removal under the CAT, prohibiting his removal to Somalia. Mr. Ali was detained for a few more months after the decision was issued and finally released on June 26, 2019. Mr. Ali was reunited with his family after enduring sixteen months in immigration detention. Due to his disabilities and the residual trauma from his ICE detention, however, Mr. Ali was no longer able to work as an electrician, became depressed, and fell in with the wrong crowd.

Redetention in 2025 Without Process and Threat of Third Country Removal

34. On July 13, 2023, Mr. Ali was convicted of possession of a weapon by a previous offender pursuant to C.R.S. 18-12-108(1). The possession of a weapon was unlawful due to his prior 2004 conviction for felony menacing. This conviction was tied to a March 11, 2022

incident when Mr. Ali was the victim of a burglary where the aggressor broke into the home and attempted to steal Mr. Ali's pain medication. Mr. Ali shot him in self-defense.

35. On April 10, 2023, Mr. Ali was charged with possession of a weapon, theft, and possession of drug paraphernalia. He pleaded guilty to possession of a weapon by a previous offender on January 12, 2024, and the other charges were dismissed. He was sentenced to thirty months in jail, with credit for time served (276 days), and had to pay various fees and fines. While in jail, he completed his General Education Diploma ("G.E.D").

36. On July 23, 2025, without prior notice, masked ICE officers arrested Mr. Ali. They told him, "We are going to take you to GEO, and you'll be gone in a week." Mr. Ali reports that he did not receive any documents explaining why ICE was taking him into custody. He was never served with a written notice of revocation of release; no authorized official made the determination to revoke release; and Mr. Ali was never given an interview or any opportunity to respond to the revocation. ICE simply processed Mr. Ali for redetention at the Aurora facility, where he remains.

37. After weeks in detention, ICE officials asked Mr. Ali to sign a document that would allow them to remove him to Somalia. He declined, given he won protection against deportation to that country. The officials then asked, "How do countries like Kenya and Uganda sound to you?" Subsequently, ICE confirmed with Mr. Ali's Counsel that they are working to secure a third country that might accept him for removal, though no information regarding formal requests or any specific countries has been provided to date.

38. On October 18, 2025, ICE Officer Irma Quiniones served Mr. Ali with his 90-day review paperwork. Exh. E, ¶ 6. He did not receive prior notice that ICE was conducting the

review, nor was he provided an opportunity to submit any evidence in support of his release. *Id.* The custody review document does not include any facts specific to Mr. Ali that provide the basis for ICE's decision to continue his detention. Mr. Ali's attorney who has a form G-28, Notice of Entry of Appearance on file with ICE did not receive prior notice of the review or a copy of his 90-day custody review determination.

39. Mr. Ali's current detention is linked to a third-country removal policy DHS began implementing in February 2025. DHS first removed several noncitizens with withholding and CAT grants to Guantanamo Bay, in Cuba and the CECOT prison in El Salvador.[2] In recent months, it began sending people to additional third-countries, including Panama, Costa Rica, Mexico, South Sudan, and Eswatini.[3] Most recently, Ghana accepted people deported from the United States, only to return some of them to countries where, like Mr. Ali, their removal was prohibited under U.S. law pursuant to findings that they would more likely than not be persecuted or tortured.[4]

Medical Diagnoses

I. Physical Disabilities

---

[2] *See* Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice at 16-21, https://s3.documentcloud.org/documents/25982155/file-5344.pdf.

[3] Kristina Cooke and Ted Hesson, *The US said it had no choice but to deport them to a third country. Then it sent them home*, REUTERS, Aug. 2, 2025, https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/.

[4] PBS News, *Immigrants deported from U.S. to Ghana are sent home, where lawyers say some could face torture*, Sep. 15, 2025, https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-where-lawyers-say-some-could-face-torture.

40. Mr. Ali's physical disabilities include: Multiple Sclerosis ("MS"), Bell's Palsy, Deep Vein Thrombosis, Cellulitis, diabetes, essential hypertension, edema, and asthma, and current complications in his knee and hip from surgeries. Exh. D, Medical Records, at 26, 28, 77; Exh. E, Declaration of Iman Ali, at ¶ 18.

41. In 2014, Mr. Ali was in a car crash that nearly killed him and caused both temporary and permanent physical disability. Exh. G, Declaration of Gwen Vogel-Mitchell, at 94. In particular, the accident shattered his pelvis, and he continues to experience chronic pain in his hip from the surgery.

42. Since 2021, Mr. Ali has also experienced internal derangement of his left knee following surgery to insert a plate. Exh. D at 79. Since July, one of the screws has broken in his knee so that it cuts and causes him severe pain when walking and limits his mobility. Exh. D at 65–66; Exh. E at ¶¶ 14–15 . While at the start of his recent detention, he could walk without a cane, he requires use of his cane to perform most daily tasks. *Id.* Although about three months have passed, Mr. Ali has yet to see an orthopedist to resolve this pain. *Id.*

43. When Mr. Ali was previously detained, on April 14th, 2018, he experienced sudden left-side facial paralysis and drooping. Exh. D at 36–38. Despite his alerting the facility, five days passed before he was brought to the hospital and diagnosed with Bell's Palsy. *Id.* Hospital staff requested he remain overnight, as they had found concerning brain lesions during his MRI possibly diagnostic of MS, but he was taken back to the detention center. *Id.* He was not returned for follow-up testing until five months later. *Id.* At this time, he was positively diagnosed with MS and recommended to begin infusions of Rituxan/Ocrevus. *Id.* at 41. Mr. Ali

requires specialized care that he is not receiving at the Aurora facility, including infusions. Exh. E at ¶¶ 11–13.

44. Mr. Ali has noticed increased symptoms related to his MS such as his left eye running and impacting his vision, fingers twitching in his right hand, nerves in his forearm going numb, and an inability to control his ring finger and pinky. *Id.* He also experiences increasing spinal pain and has been told this is because his spine is shifting due to the MS. *Id.*

II. Psychiatric Disabilities

45. Mr. Ali's prior and current psychiatric diagnoses include: Bipolar I with psychotic features,[5] neurocognitive disorder, Post-Traumatic Stress Disorder, and Anxiety. *See* Exh. D.

46. Mr. Ali's Post-Traumatic Stress Disorder stems from the extreme trauma he experienced as a young child in Somalia and Ethiopia, and during his formative years in the United States and his prior abuse while detained. Exh. F at 105; Exh. E at ¶ 10.

47. In his car accident in 2014, Mr. Ali suffered a severe Traumatic Brain Injury (TBI). Exh. F at 105. This TBI appears to have triggered much more severe psychiatric symptoms than Mr. Ali had previously, including "low mood, hopelessness, irritability, poor sleep and appetite," as well as auditory hallucinations. Exh. F at 103. In 2015, 2016, and 2017, he attempted suicide three different times. *Id.* However, after an inpatient hospitalization, he stabilized on medication and resumed part-time work and activity in his community. *Id.*

48. His first experience in immigration detention dramatically exacerbated Mr. Ali's psychiatric symptoms. *Id.* He began struggling with worse sleep and worsening nightmares, an

[5] Mr. Ali has previously received additional diagnoses of schizophrenia and Bipolar II, but his most recent evaluator finds Bipolar I Disorder to more accurately fit his current symptomology. *See* Exh. G at 93.

increase in psychotic and post-traumatic stress symptoms, and his third or fourth episode ever of hypomania. *Id.* He also stated that "[i]f it is determined that he has to leave the country and cannot see his family again, he would want to kill himself." *Id.* at 104. His evaluator noted that "Mr. Ali could achieve substantial improvement of his mental health if he were released to return to his life here in the United States." *Id.* at 106.

49. On October 2, 2026 Mr. Ali was evaluated in detention by Dr. Gwen Vogel-Mitchell. She found he met the criteria for Bipolar I Disorder with psychotic symptoms and Mild Neurocognitive Disorder. Exh. G at 100. She noted that "[h]is psychiatric stability depends on uninterrupted pharmacological management and structured psychosocial support" and that he has limited support of this type in detention. *Id.* Without such support, she sees that "Mr. Ali struggles to regulate mood, manage distress, and stay engaged with care providers." *Id.* at 101.

Prior History of Detention & its Impact on Mr. Ali's Health

I. Detention at West Texas Detention Center in February 2018

50. While detained at the West Texas Detention Facility in February 2018, Mr. Ali and dozens of other Somali men were physically and verbally abused by guards. A complaint was filed with the DHS Office of the Inspector General (OIG) about these abuses, and OIG opened an investigation, interviewing dozens of men prior to their removal. Exh. C. Among other things, Mr. Ali reported being placed in segregation for two days simply because he asked for underwear and socks. In response to his request, the Warden told him, "Shut your black ass up. You don't deserve nothing. You belong at the back of that cage." *Id.* at 15.

51. Mr. Ali also described being locked in a "cage" for one to two hours wearing only his boxer shorts, where he remained cold and shivering, because he was "talking too loud to the

warden." Exh. C. at 13. Afterwards, one of the officers threw him against the wall and threatened him not to tell anyone or he would be "in the hole" all day. *Id.* ICE officers who were present and saw how he was treated did nothing to intervene. *Id.*

52. Furthermore, despite his physical injuries and mental health conditions, he received only ibuprofen while at the West Texas Detention Center. He never saw a psychiatrist, even though he was hallucinating while there. He was also denied crutches despite having severe pain walking, and he was denied an inhaler even though he has asthma.

II. Detention at Denver Contract Detention Facility in April 2018 to June 2019

53. Throughout his prior detention at the Aurora facility, Mr. Ali experienced serious delays and denial of appropriate medical care. First, Mr. Ali never received the antipsychotic medication that his condition requires. Second, Mr. Ali was deprived of proper care for his Bell's Palsy and Multiple Sclerosis. Third, ICE and/or GEO repeatedly subjected him to punitive segregation in response to behaviors stemming from his mental disabilities, even though solitary confinement is known to exacerbate PTSD and Bipolar II Disorder. ICE and GEO also deprived him of his medications while in segregation.

54. Both Mr. Ali and his counsel repeatedly complained about the delays and denial of medical care at the Aurora facility, including filing a complaint with the DHS Office for Civil Rights and Civil Liberties (CRCL) on November 14, 2018, Exh. C at 8–20, and sending letters to the Director of ICE's Denver Field Office in April and November 2018, *id.* at 21–23. However, the only accommodation that Mr. Ali ever received in response to these complaints was a cane to help him walk, which failed to address many of the issues set forth above.

III. Current Detention at the Aurora Facility

55. For nearly the last decade, immigrants detained at the Aurora facility have raised the alarm about oppressive and unsafe conditions, including substandard medical and mental health care, medical neglect, failures to comply with agency standards, reports of excessive use of force, retaliation, and claims related to wage violations and forced labor.[6] In this context, three

[6] *See e.g.*, American Immigration Council, National Immigration Project, RMIAN, "Complaint Underscoring Why People Who are Transgender and Nonbinary Should Not Be Detained in Civil Immigration Detention," (Apr. 9, 2024), https://nipnlg.org/sites/default/files/2024-04/CRCL_complaint-transgender-care.pdf; American Immigration Council, National Immigration Project, RMIAN, "Complaint Detailing Abusive Overuse of Solitary Confinement and Mistreatment that Disproportionately Impacts Persons with Disabilities at the Aurora Contract Detention Facility," (Jul. 13, 2023), https://www.americanimmigrationcouncil.org/sites/default/files/research/misuse_of_solitary_confinement_in_colorado_immigration_detention_center_complaint.pdf; American Immigration Council, RMIAN, Immigrant Justice Idaho (IJI), Mariposa Legal, "Violations of ICE COVID-19 Guidance, PBNDS 2011, and Rehabilitation Act of 1973 at the Denver Contract Detention Facility," (Feb. 2022), https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_medical_neglect_people_sick_covid_19_colorado_facility_complaint1.pdf; AIC, IJI, Immigration Equality, "Complaint re: Racial Discrimination, Excessive Use of Force at the Denver Contract Detention Facility," (March 24, 2022), available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_racial_discrimination_excessive_force_colorado.pdf; Order, *Menocal, et al., v. GEO Group, Inc.*, No. 1:14-cv-02887-JLK-MEH, ECF 380 at 40-41 (Oct. 18, 2022) ("GEO went beyond its contract with ICE in requiring [people in detention] to clean up all common areas and after other [detained people] under the threat of segregation."); ACLU of Colorado, "Cashing in on Cruelty: Stories of death, abuse, and neglect at the GEO immigration detention facility in Aurora," (2019), available at: https://www.aclu-co.org/sites/default/files/ACLU_CO_Cashing_In_On_Cruelty_09-17-19.pdf (hereinafter ACLU Report) (reporting on substandard medical and mental health care at the Aurora Detention Facility); AILA, "Complaint Filed with DHS Oversight Bodies Calls for Improvement to Medical and Mental Health Care of Immigrants in Aurora Detention Center," June 4, 2018, available at: https://www.aila.org/advo-media/press-releases/2018/complaint-filedwith-dhs-oversight-bodies-calls ("The complaint illustrates the government's failure to comply with official policies on mandated care; grossly substandard medical and mental health care; limited transparency and public accountability regarding many other aspects of [ ] care; and facility staff and ICE's deliberate indifference to a detainee's serious medical needs.").

people detained at Aurora have died since 2012, including the death of Melvin Ariel Calero-Mendoza in 2022.[7]

56. Mr. Ali's complaints regarding his care fits within a broader systemic failure to provide adequate medical care to people detained in the Aurora facility.

LEGAL FRAMEWORK

Convention Against Torture Protection

57. Withholding and deferral of removal are mandatory forms of protection preventing deportation to the country or countries where an immigration judge finds that the individual is more likely than not to be persecuted or tortured. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16–18, 1208.16–18; *see also Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013) ("[T]he Attorney General has no discretion to deny relief to a noncitizen who establishes his eligibility [for withholding of removal or CAT protections]."). The CAT affords mandatory protection against deportation to a country where the individual is likely to be tortured. *See* 8 U.S.C. § 1231; 8 C.F.R. §§ 208.16–18, 1208.16–18; 28 C.F.R. § 200.1; *see also Moncrieffe*, 569 U.S. at 187 n.1.

58. Protection pursuant to CAT deferral can only be terminated if there is a change in country conditions and must follow the procedures set forth in 8 C.F.R. §§ 208.17(d), 1208.17(d). Notably, it *cannot* be terminated on the basis of a criminal conviction. *See id.* Subsection (d) requires the government to "file a motion with the Immigration Court having administrative control . . . to schedule a hearing to consider whether deferral of removal should

[7] Levy, *Family of Man Who Died in ICE Custody from Untreated Blood Clot Sues Aurora Facility*, DENVER POST (Oct. 19, 2024), https://www.denverpost.com/2024/10/19/ice-aurora-facility-man-died-family-sues/.

be terminated." 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). "The Immigration Court shall provide notice to the [noncitizen] and the Service of the time, place, and date of the termination hearing." *Id.* at (d)(2). The noncitizen must be afforded the opportunity to "supplement the information in his or her initial application." *Id.* After a hearing, the immigration judge will determine whether it "is more likely than not" that the applicant will "be tortured in the country to which removal has been deferred" and if so, the order of deferral shall remain in place. C.F.R. §§ 208.17(d)(4), 1208.17(d)(4). Otherwise, the order may be terminated, which may be appealed to the BIA. *Id.*

Post Final Order ICE Detention

59. Noncitizens, including those subject to final orders of removal, are protected by the U.S. Constitution. *See Zadvydas*, 533 U.S. at 693. And while DHS may have changed how it prioritizes the removals of noncitizens, it may not do so at the expense of fairness and due process. *See Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (Apr. 7, 2025) (per curiam) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings."). For detention to be authorized, the government must comply with both the applicable statutory provisions and its agency regulations. *See United States v. Caceres*, 440 U.S. 741, 760 (1979).

60. In *Zadvydas*, the 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." *Id.* at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699.

61. In order to balance the statutory language with constitutional limitations, the Supreme Court adopted a "presumptively reasonable period of detention" of six months when reviewing detention during the removal period. *Zadvydas*, 533 U.S. at 701. After six months, 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.* Moreover, "for 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. In sum, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699–700.

62. After *Zadvydas*, DHS added additional regulations creating "special review procedures" to determine whether detained noncitizens are likely to be removed in the reasonably foreseeable future. *See Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56,967 (Nov. 14, 2001). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)–(d), or by demonstrating, by clear and convincing evidence before an immigration judge, that the noncitizen is "specially dangerous."

Third Country Removals

63. Under certain circumstances, noncitizens can be removed to "third countries" that are not their country of origin. 8 U.S.C. § 1231(b)(1)–(3). Under such circumstances, the government may remove noncitizens to any country that is not their own country of citizenship

or nationality where the foreign government will accept them. 8 U.S.C. § 1231(b)(2)(E)(vii). Although third country removals are contemplated by the INA, they are not common. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021) (addressing the contention that "DHS often does not remove [a noncitizen] to an alternative country if withholding relief is granted" and "only 1.6% of [noncitizens] who were granted withholding of removal were actually removed to an alternative country").

64. Removal under this authority cannot be effectuated if the person's "life or freedom would be threatened" due to persecution on account of a protected ground, 8 U.S.C. § 1231(b)(3)(A), or if they are likely to face future torture, 8 C.F.R. §§ 208.16(c), 208.17(b)(2), 1208.16(c), 1208.17(b)(2). Pursuant to § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an immigration judge if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408–09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard"). Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019).

65. In February of 2025 DHS issued a policy directive instructing the Enforcement and Removal Operations (ERO) division of ICE to review the cases of noncitizens granted

withholding of removal or CAT protection "to determine the viability of removal to a third country and accordingly whether the alien should be re-detained." DHS Policy Directive on Expedited Removal and Nondetained Docket (Feb. 18, 2025), https://perma.cc/T8TV-GT84 ("February DHS Policy Directive"); *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 367 (D. Mass. 2025).

66. In March of 2025, the Secretary of Homeland Security, Kristi Noem, issued a memorandum entitled Guidance Regarding Third Country Removals ("March Guidance"). *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at *23 (D. Mass. Apr. 18, 2025). The March Guidance provided instructions to immigration agencies on how to initiate removal to a third country (a country not designated in a removal order) for individuals granted withholding of removal. *Id.*

67. The U.S. District Court for the District of Massachusetts initially enjoined this policy, finding that "[b]lanket diplomatic assurances do not address DHS's obligation to undertake an individualized assessment as to the sufficiency of the assurances, as required under the statutory and regulatory framework." Nor do they offer "protection against either torture by non-state actors or chain refoulement, whereby the third country proceeds to return an individual to his country of origin." *D.V.D.*, 2025 WL 1142968, at *22. However, on June 23, 2025, without providing any reasoning, the Supreme Court stayed the lower court's order, allowing the DHS policy to remain in effect. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025); *see also Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) ("[t]he stay order is not a ruling on the merits, but instead simply stays the District Court's injunction pending a ruling on the merits.").

Due Process Governs Redetention Decisions Revoking an Order of Supervision

68. "The Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (2001).

69. Under substantive due process doctrine, a restraint on liberty like revocation of a noncitizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas*, 533 U.S. at 678, 690–92 (discussing constitutional limitations on civil detention).

70. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a noncitizen's order of supervision. *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); *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ---, 2025 WL 1983677, at *7 n.4 (N.D. Cal. July 17, 2025) (applying the *Mathews* Test where ICE intended to re-detain petitioner, who was released on an OSUP, and finding that procedural due process required a hearing before a neutral adjudicator given the importance of his liberty interest).

Statute and Regulations Govern Procedures for Revoking an Order of Supervision

71. 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) (titled "Supervision after 90-day period").

72. A noncitizen may only be detained 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).

73. But even where 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.

74. Agency regulation delineates circumstances when noncitizens may be detained beyond the removal period. 8 C.F.R. §§ 241.4, 241.13. "[T]hese regulations are intended to provide due process in that they are fairly construed to be part of a procedural framework 'designed to ensure the fair processing of an action affecting an individual,' such that when they are not followed, prejudice is presumed." *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025) (citing *United States v. Morgan*, 193 F.3d 252, 267 (4th Cir. 1999)). Subsection (b)(4) indicates that "[t]he custody review procedures in this section do not apply after the Service has made a determination, pursuant to the procedures provided in 8 C.F.R. 241.13, that there is no significant likelihood that [a noncitizen] under a final order of removal can be removed in the reasonably foreseeable future." 8 C.F.R. §

241.4(b)(4). The sole exception is if there is a change in circumstances related to the viability of removal in the reasonably foreseeable future. *Id.*

75. Moreover, it is clear 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*, 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).

76. In other words, this provision "indicates that other ICE employees, including high ranking ones, can execute the powers and duties of an immigration officer," but does not "indicate the reverse: that every immigration officer can execute the powers and duties of the higher ranking supervisory officials." *Umanzor Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7 (D. Md. Aug. 27, 2025).

77. Finally, upon revocation of an order of supervision, ICE must give a noncitizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. §§ 241.4(l)(1); 241.13(i)(3).

The APA Sets Minimum Standards for Final Agency Action

78. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704.

79. Final agency actions are those (1) that "mark the consummation of the agency's decisionmaking process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

80. ICE's revocation of an order of supervision is a final agency action subject to this Court's review. The Supreme Court has recognized that a federal agency's failure to comply with its own regulations generally renders the associated agency action unlawful. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

81. The revocation here marked the consummation of ICE's decisionmaking process regarding Mr. Ali's custody.

82. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Mr. Ali in violation of his rights under the Constitution, statute, and regulations.

Section 504 of the Rehabilitation Act

83. Section 504 prohibits discrimination on the basis of a disability in programs, services, or activities conducted by U.S. federal agencies, including DHS and EOIR. 29 U.S.C. § 794; 6 C.F.R. § 15.30, *et seq.* (applying to DHS); 28 C.F.R. § 39.130, *et seq.* (applying to EOIR).

84. Section 504 applies to DHS and the Department of Justice, which includes the Executive Office of Immigration Review (EOIR) (consisting of the immigration courts and BIA). *See* 6 C.F.R. § 15.30, *et seq.*; 28 C.F.R. § 39.130, *et seq*. Regulations promulgated by the Departments state that they may not, directly or indirectly "afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others;" or "provide a qualified [individual] with an aid, benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others." 6 C.F.R. § 15.30(b)(1)(iii); 28 C.F.R. § 39.130(b)(1)(iii).

85. The requirements of Section 504 apply to the immigration benefits and proceedings that noncitizens may seek under the INA. *See Galvez-Letona v. Kirkpatrick*, 54 F.Supp.2d 1218, 1224–25 (D. Utah 1999), *aff'd on other grounds*, 3 F. App'x 829 (10th Cir. 2001); *Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034, 1053, 1056 (C.D. Cal. 2010) (finding that plaintiffs with disabilities in immigration detention "were not provided with even the most minimal of existing safeguards under [8 C.F.R. §] 1240.4, let alone more robust accommodations required under the Rehabilitation Act," and ordering the appointment of a "qualified representative" for persons in detention with serious mental illness); *Palamaryuk by & through Palamaryuk v. Duke*, 306 F. Supp. 3d 1294, 1300–02 (W.D. Wash. 2018) (holding that Section 504 required ICE to halt transfer of plaintiff outside of the area in which plaintiff's attorney worked to ensure ongoing meaningful access to his counsel and immigration proceedings).

86. The Rehabilitation Act defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1). This definition

includes chronic illness, as well as physical, intellectual, developmental, psychiatric, visual, and auditory disabilities. Margo Schlanger, Elizabeth Jordan, Roxana Moussavian, *Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act*, 17 HARV. LAW & POL. REV. 1, 237–48 (2022). Evidence of a medical diagnosis is not required and proof from an individual's personal experience demonstrating that the impairment is substantial is sufficient to qualify for Section 504 protections. *Robertson v. Las Animas County Sheriff's Dept.*, 500 F.3d 1185, 1194 (10th Cir. 2007) (applying an analogous analysis for how to determine whether an individual has a qualifying disability protected by the American with Disabilities Act). "[T]he same substantive standards apply under the Rehabilitation Act and the [Americans with Disabilities Act]." *Edmonds-Radford v. Southwest Airlines Co.*, 17 F.4th 975, 986 (10th Cir. 2021) (citation omitted).

ARGUMENT

87. The Court should grant Mr. Ali's petition, order his immediate release–or, at a minimum, order his release and subsequently conduct an individualized custody hearing–and require that he receive notice and an opportunity to be heard prior to any removal to a third country.

I. Mr. Ali is Subject to Unlawful Post-Final Order Detention That Violates Fifth Amendment Due Process, 8 U.S.C. § 1231(a)(6), and *Zadvydas*.

88. Mr. Ali is protected from indefinite detention by 8 U.S.C. § 1231(a) and due process, as recognized by the Supreme Court in *Zadvydas*. 533 U.S. at 690. His order of removal, and simultaneous CAT deferral grant became final on March 28, 2019. His current detention is not justified.

89. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotations omitted). In *Zadvydas*, the Supreme Court held that under 8 U.S.C. § 1231(a)(6), post-final-order detention is presumptively reasonable for a period of six months. 533 U.S. at 678. After the expiration of six months, if removal is not reasonably foreseeable, continued detention is no longer authorized. *Id.* at 699–700. At this stage, the burden shifts to the government to show that there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701.

90. Civil immigration detention is therefore constitutional only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Id.* (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Importantly, the Supreme Court has found that detention violates due process "unless the detention is ordered in a *criminal* proceeding with adequate procedural protections." *United States v. Salerno*, 481 U.S. 739, 746 (1987). "[N]othing supports the argument that danger to the community is a relevant factor to consider in conducting a *Zadvydas* analysis." *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *8 (D.N.J. June 24, 2025).

91. 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).

92. Here, Mr. Ali's detention is illegal based on 8 U.S.C. § 1231(a) and well-settled Supreme Court precedent. *Zadvydas*, 533 U.S. at 701 (delineating that 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) (ordering petitioner's release where "[t]here is no contention that conditions in Cuba have changed so that [the petitioner's] removal to Cuba is reasonably foreseeable," and therefore he must "be released and paroled into the United States.") (citing *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005); *Nzayikorera v. Fabbricatore*, 21-CV-02037-RMR, 2021 WL 9385836 (D. Colo. Sep. 9, 2021) (granting immediate release where the government failed to show a "significant likelihood of removal in the reasonably foreseeable future" and detention was no longer authorized by statute)).

93. Over six and a half years have passed since Mr. Ali's order of removal became final. Exh. A. In 2019, DHS determined that it could not effectuate Mr. Ali's removal and released him into the community. *See* 8 C.F.R. § 241.4(k)(2)(ii). Respondents have provided no evidence that circumstances related to the viability of his removal to Somalia have changed. Thus, the presumptively reasonable six-month window of post-order detention has come and gone. *Zadvydas*, 533 U.S. at 701. DHS bears the burden of establishing that removal is likely within the reasonably foreseeable future. *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("Imposing the burden of proof on the [noncitizen] each time he is re-detained would lead to an unjust result and serious due process implications."). It cannot make such a showing here.

94. Respondents cannot say when, if at all, they might remove Mr. Ali. As of the date of filing, DHS has provided no evidence that it can effectuate Mr. Ali's removal. Exh. E at ¶¶ 6–

7. Similar factual circumstances have led courts to find removal not reasonably foreseeable. *See, e.g., Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025) (finding "serious questions" existed regarding whether petitioner's removal was reasonably foreseeable where petitioner had final order of removal, which was deferred under CAT in 2018); *Munoz-Saucedo*, 2025 WL 1750346, at *8 (determining removal to a third country was not reasonably foreseeable where petitioner granted withholding of removal to his country of origin); *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where noncitizen is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 2:25-cv-04108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding petitioner demonstrated "no significant likelihood of his removal in the reasonably foreseeable future" when years passed since the date of his final order and ICE provided no indication that third county removal was viable); *see also Tadros v. Noem*, No. 2:25-cv-04108-EP, Order (D.N.J. June 17, 2025), ECF No. 17 (granting habeas petition).

95. Mr. Ali's detention violates 8 U.S.C. § 1231(a) and this Court should order his immediate release. *Zadvydas*. 533 U.S. at 701.

II. Mr. Ali Cannot be Removed in the Reasonably Foreseeable Future Because, Even if His Removal Could be Effectuated to a Third Country, He is Entitled to Additional Process.

96. DHS's assertion that it intends to remove Mr. Ali to a third country is simply a pretext for his indefinite detention. Even if the government were to identify a third country that would accept Mr. Ali, he cannot be removed in the reasonably foreseeable future because he is

entitled to adequate notice, a meaningful opportunity to be heard, and individualized diplomatic assurances before being removed from the United States to a third country.[8] *See Arostegui Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *13 (D. Colo. Aug. 8, 2025) (granting "an injunction requiring Respondents to adhere to their *non-discretionary* obligation to provide Maldonado with notice and an opportunity to seek withholding of removal before he is deported to any third country.").

97. "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Earlier this year, the Supreme Court emphasized this point, explaining that before being spirited away, noncitizens are "entitled to notice and an opportunity to challenge their removal." *J. G. G.*, 604 U.S. at 673.

98. In immigration proceedings addressing fear-based claims for protection, judges are obligated to provide notice of proposed countries of removal. *See* 8 C.F.R. § 1240.10(f) (stating that "immigration judge shall notify the [noncitizen]" of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) ("If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvise [the noncitizen] that he or she may apply for asylum in the United States or withholding of removal to those countries[.]").

99. When charged with the question of whether noncitizens are entitled to notice and a meaningful opportunity to present a fear-based claim, circuit courts have resoundingly sided

[8] Mr. Ali also fears his unlawful deportation to Somalia. *See Abrego Garcia*, 604 U.S. ___ (2025) (recognizing the U.S. government's acknowledgment that petitioner's removal to El Salvador, which violated an IJ's order granting him protection against removal to that country, was illegal).

with the noncitizen. For example, in *Tomas-Ramos v. Garland*, the Fourth Circuit recognized that 8 U.S.C. § 1231 and the CAT's implementing regulations provide noncitizens with a pathway to seek withholding of removal and CAT protection "to prevent removal to a particular country." *Tomas-Ramos v. Garland*, 24 F.4th 973, 977 (4th Cir. 2022). Likewise, the Ninth Circuit found in an unpublished opinion that "last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country." *Najjar v. Lunch,* 630 Fed. App'x 724 (9th Cir. 2016).

100. District courts across the country have found similarly. For instance, the Western District of Washington held that "[a] noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden,* 409 F. Supp. 3d at 1009 (citing *Mathews,* 424 U.S. at 349; *Kossov,* 132 F.3d at 408); *see, e.g., Santamaria Orellana*, 2025 WL 2444087, at *8; *Mahdejian v. Bradford*, No. 9:25-CV-00191, 2025 WL 2269796, at *4 (E.D. Tex. July 3, 2025) (determining that "[n]oncitizens have a right to meaningful notice and opportunity to be heard before being deported to a third country."); *Vaskanyan v. Janecka,* No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *7 (C.D. Cal. June 25, 2025) (finding that CAT requires "adequate notice and a meaningful opportunity to raise any fear-based claim" before removal); *Tadros*, 2025 WL 1678501, at *3 (petition subsequently granted). Akin to the circumstances presented here, the Northern District of California found that where CAT deferral to El Salvador was previously granted, "there are no countries to which [petitioner] could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires."

Ortega, 2025 WL 1771438, at *3. Most recently, in the Southern District of Texas, the court explicitly applied the *Mathews* factors in the context of a claim against unlawful removal to a third country, finding that "the cost-benefit analysis weighs in [petitioner's] favor." *Sagastizado Sanchez v. Noem, et al.*, Case 5:25-cv-00104, ECF No. 26 (S.D. TX, Oct. 2, 2025).

101. Here, the Fifth Amendment Due Process Clause, 8 U.S.C. § 1231, and the CAT's implementing regulations enshrine Mr. Ali's right to notice and opportunity to be heard on a fear-based claim when the government designates a third country for removal. *See, e.g., Aden*, 409 F. Supp. 3d at 1004. He also has a due process right to the implementation of a process or procedure to afford his such protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Mr. Ali need not make any additional showing to prevail.

102. Nevertheless, application of the *Mathews* factors leads to the same result—Mr. Ali requires sufficient process. *See Mathews*, 424 U.S. at 335. Under *Mathews*, determining the specific dictates of due process generally requires evaluation of "(1) the private interest that will be affected by the official action, (2) a cost-benefit analysis of the risks of an erroneous deprivation versus the probable value of additional safeguards, and (3) the Government's interest, including the function involved and any fiscal and administrative burdens associated with using different procedural safeguards." *Dusenbery v. United States*, 534 U.S. 161, 167 (2002) (citing *Mathews*, 424 U.S. at 335).

103. First, Mr. Ali has a private interest at stake is his right to have his removal withheld from a country where he is more likely than not to be tortured. In fact, he already prevailed on fear-based claim to Somalia. To date, Mr. Ali has not been provided with notice, a meaningful opportunity to present a fear-based claim to protect against his removal to a third

country, or any individualized diplomatic assurances from a prospective third country of removal. Yet he remains detained indefinitely–presumably on this basis. In other words, Mr. Ali's detention and the question of its legality merges with his right to have his removal deferred from a country where it is more likely than not he will face torture. As such, he seeks to raise a claim for CAT protection to any country where the government intends to effectuate his removal. 8 U.S.C. § 1231(b)(3) (providing restrictions on removal to a country where a person's life or freedom would be threatened); 8 C.F.R. §§ 208.17–18; 1208.17–18. Given the significance of this interest and the mandatory nature of deferral of removal for noncitizens who qualify, Mr. Ali's private interest weighs heavily in favor of a robust due process requirement.

104. Second, there is a high risk of Respondents' erroneous deprivation of Mr. Ali's rights given they have not provided *any* notice of an intended third country of removal or an opportunity to seek protection, a right to which he is entitled. *See* 8 U.S.C. § 1231(b)(3). Because he has not received any process in this regard, the importance of additional procedural safeguards far outweighs the minimal administrative burden.

105. Finally, the public interest in preventing unlawful deportation of noncitizens outweighs the government's interest in executing a removal order—particularly where protection has already been afforded. The procedures Mr. Ali requests would create a minimal delay in that process, and he will likely demonstrate he is at risk of harm in any intended country of removal given the risk factors he displays. Thus, pursuant to *Mathews*, due process requires the procedural protections Mr. Ali seeks prior to being unlawfully removed.

106. In addition, the current third country removal policy applied to Mr. Ali violates the APA, given it fails to follow non-discretionary statutory duties requiring notice and a

meaningful opportunity to present a fear-based claim. Under the APA, agency action that violates federal statute is arbitrary and capricious and may be set aside by federal courts. 5 U.S.C. § 702(2)(A), (C) (empowering courts to set aside agency action that is "arbitrary and capricious," "otherwise not in accordance with law," or "short of statutory right"). Federal agencies may not take agency action that violates their own regulations and policies. 5 U.S.C. § 702(2)(A); *see Accardi*, 347 U.S. at 268 (agencies must follow their own internal regulations and policies); *Yellin v. United States*, 374 U.S. 109, 121 (1963) (recognizing that even if the petitioner does not ultimately prevail, he "should at least have the chance given him by the regulations."). Under the *Accardi* doctrine, an agency's failure to provide procedural safeguards delineated in its own regulations undermines the legality of the agency action. *Santamaria Orellana v. Baker, et al.*, No. CV 25-1788-TDC, 2025 WL 2841886, at *10 (D. Md. Oct. 7, 2025) (finding that EOIR's failure to follow the procedures set forth in 8 C.F.R. § 1208.31(g) "is a due process violation under the *Accardi* doctrine.").

107. By failing to implement a process or procedure to afford Mr. Ali meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports him to a third country, Respondents are failing to adhere to Mr. Ali's substantive and procedural due process rights and are not complying with procedures required by the INA, FARRA, and the implementing regulations.

108. At a minimum, Mr. Ali qualifies for injunctive relief pursuant to the Court's All Writs Act authority, prohibiting his unlawful removal from the United States while these proceedings are pending. *Arostegui-Maldonado*, 2025 WL 2280357, at *14.

III. Mr. Ali's Arrest and Subsequent Redetention is Unlawful.

109. Respondents' redetention of Mr. Ali violates his right to due process as well as their own duty to follow agency regulations, violating the APA.

A. Mr. Ali's redetention violates due process.

110. The *Mathews* factors also apply when assessing what process Mr. Ali was due before his liberty was revoked. 424 U.S. at 335; *see E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, --- F. Supp.3d ---, 2025 WL 2402130, at *3 n.4 (W.D. Wash. Aug. 19, 2025) (collecting cases employing the *Mathews* factors in the context of immigration redetention).

111. First, Mr. Ali has a considerable private interest in his liberty, including freedom from physical confinement. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (recognizing that being free from detention is "the most elemental of liberty interests[.]").

112. Such an interest is particularly profound when release has previously been granted. The Tenth Circuit explained this point well in *Harper v. Young*,

> The passage outside the walls of a prison does not simply alter the degree of confinement; rather, it works a fundamental change in the *kind* of confinement, a transformation that signals the existence of an inherent liberty interest and necessitates the full panoply of procedural protections.

64 F.3d 563, 566 (10th Cir. 1995), *aff'd,* 520 U.S. 143 (1997). The Supreme Court went on to affirm the Tenth Circuit's ruling, holding that persons released from confinement pursuant to a preparole conditional supervision program have a protected interest in their "continued liberty." *Young v. Harper*, 520 U.S. 143, 147 (1997).

113. The same interest applies in the context of release from immigration detention. *See Garcia-Ayala v. Andrews*, No. 2:25-CV-02070-DJC-JDP, 2025 WL 2597508, at *3 (E.D. Cal. Aug. 8, 2025) (finding petitioner had a substantial interest in maintaining his out-of-custody status where he was released for over two years prior to his re-detention); *Doe v. Becerra*, 787 F.

Supp. 3d 1083, 1093 (E.D. Cal. 2025) ("The Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.") (citing *Zadvydas*, 533 U.S. at 690).

114. Here, Mr. Ali was previously released from ICE custody and requires robust procedural protections. Critical to the analysis, ICE previously authorized his release on an order of supervision after Mr. Ali prevailed on his CAT deferral claim and the agency found he could not be removed in the reasonably foreseeable future. After being released from ICE custody, he returned to live with his wife and sons, and had close relationships with his stepdaughter and his granddaughter—all of whom are U.S. citizens. He had access to medical care and the support necessary to maintain his health. In sum, he possesses a protected liberty interest.

115. Second, Mr. Ali demonstrates a high risk of erroneous deprivation. In *Zadvydas*, the Supreme Court instructed that removable noncitizens' release could "be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." 533 U.S. at 700. However, *Zadvydas* provided no instruction for what process is necessary to protect noncitizens' liberty interest when the government seeks to return them to custody. Rather, *Morrissey* and *Young* address that question, explaining that the deprivation is a "grievous loss" that requires a hearing before a neutral arbiter, regardless of whether government agents otherwise have statutory authority to redetain. *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972) ("[D]ue process requires that after the arrest, the determination that reasonable ground exists for revocation of parole should be made by someone not directly involved in the case"); *see also Young*, 520 U.S. at 148.

116. In the immigration context where a noncitizen previously secured release from detention, courts have found that a pre-deprivation hearing is required to comply with due process. *Garcia Domingo v. Castro*, Case No. 1:25-cv-00979-DHU-GJF, at *5-7 (D.N.M. Oct. 15, 2025) (granting a temporary restraining order requiring petitioner's immediate release); *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ---, 2025 WL 1983677, at *9 (N.D. Cal. July 17, 2025) (determining that "absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process.") (collecting cases); *see Santamaria Orellana,* 2025 WL 2444087, at *8 (finding that an OSUP revocation without following the regulatory scheme violated petitioner's right to due process under the Fifth Amendment); *Bermeo Sicha v. Bernal*, 2025 WL 2494530 (D. Me. Aug. 20, 2025) (due process requires hearing before revocation of conditional parole); *Ceesay*, 781 F. Supp. 3d at 161.

117. Third, Respondents' interest in redetention without affording Mr. Ali with additional process is low. The effort and cost required to provide him with "procedural safeguards is minimal." *Doe*, 787 F. Supp. 3d at 1094. Thus, the *Mathews* factors overwhelmingly favor Mr. Ali given that any additional burden the government might face by ensuring he receives adequate process does not outweigh his significant liberty interest or risk of erroneous deprivation.

118. Finally, Mr. Ali's redetention violates his substantive due process rights because a restraint on liberty like revocation of his order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Hendricks*, 521 U.S. at 363.

119. In sum, Mr. Ali's redetention violates due process and immediate release is required.

B. Respondents redetention of Mr. Ali violated his regulatory rights, the APA, and the *Accardi* doctrine.

120. Respondents' non-compliance with the process delineated by DHS regulation—8 C.F.R. §§ 241.4(l)(1), 241.13(i)—has wrongly resulted in the revocation of Mr. Ali's release and his detention. *See Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) ("ICE's decision to re-detain a non-citizen...who has been granted supervised release is governed by ICE's own regulations requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.") (citing 8 C.F.R. § 241.13(i)(2)).

121. DHS must follow the process required by its own regulations before revoking release. *See Qui v. Carter*, No. 25-3131-JWL, 2025 WL 2770502, at *4 (D. Kan. Sept. 26, 2025) (finding that "because officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and petitioner is entitled to his release (subject to the same OSUP that governed his prior release)."); *Yang v. Kaiser, et al.*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (granting preliminary relief due to ICE's failure to provide an informal interview during the lengthy period of time petitioner was detained, which rendered his redetention unlawful, requiring immediate release); *Ceesay*, 781 F. Supp. 3d at 164; *Rombot v. Souza*, 296 F. Supp. 3d 383, 388–89 (D. Mass. 2017).

122. The need for heightened process is particularly acute where there is no record of the underlying decision explaining the basis for the revocation. *Santamaria Orellana*, 2025 WL 2444087, at *8. In *Santamaria Orellana*, the District of Maryland found that where "ICE's revocation of release violated its own regulations by failing to have an authorized official make

the revocation decision, failing to provide Santamaria Orellana with notification of the reasons for his re-detention, failing to provide Santamaria Orellana with an informal interview, or some combination of these deficiencies," his detention was "unlawful in violation of the *Accardi* doctrine and violate[d] his right to due process under the Fifth Amendment." *Id.* The Eastern District of California came to the same conclusion where "there was no indication that an informal interview was provided," emphasizing the point that "[g]overnment agencies are required to follow their own regulations." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *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 164 (finding that ICE violated its regulations and due process when ICE failed to provide petitioner an informal interview upon his re-detainment).

123. Here, Mr. Ali was not afforded the process required by 8 C.F.R. §§ 241.4, 241.13. He did not receive: notice of Respondent DHS's decision to revoke his release; an explanation providing the legal basis for his re-detention; an informal interview; nor proof that an appropriate official charged with making such determinations issued a notice in his case. Exh. E at ¶¶ 2–3. As a result, in addition to violating due process, Mr. Ali's redetention violates 8 C.F.R. §§ 241.4, 241.13, the APA, and the *Accardi* doctrine.

IV. Mr. Ali's Continued Detention Violates Section 504 of the Rehabilitation Act, and Release is the only Reasonable Accommodation that Ensures Meaningful Access to His Immigration-Related Proceedings.

124. Mr. Ali's physical and psychiatric disabilities prevent him from meaningfully accessing his current immigration proceedings related to the question of whether there is a significant likelihood of removal in the reasonably foreseeable future as well as any cascading process he is due. As a result, release is the reasonable accommodation under Section 504 that would allow him to participate in or benefit from a government program such that he may have an equal opportunity to reach the same level of achievement as provided to others who do not have a disability. *See* 6 C.F.R. § 15.30(b)(1)(iii); 28 C.F.R. § 39.130(b)(1)(iii).

A. Section 504 Prohibits Respondents from Engaging in Disability Discrimination

125. Under Section 504, "[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity . . . conducted by any Executive agency." 29 U.S.C. § 794. ICE adopted binding regulations to ensure that Section 504 is implemented within the agency. 6 C.F.R. § 15.30, *et seq*. Section 504 forbids not only facial discrimination against individuals with disabilities, but also requires that executive agencies and departments, such as DHS, alter policies and practices to prevent discrimination on the basis of disability.

126. The terms "benefit, programs, and services" are construed broadly. *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) ("Modern prisons provide [people who are incarcerated] with many recreational 'activities,' medical 'services,' and educational and vocational 'programs,' all of which at least theoretically 'benefit'" the people imprisoned); *see also Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (recognizing the "familiar canon of

statutory construction that remedial legislation should be construed broadly to effectuate its purposes").

127. In *Alexander v. Choate*, the Supreme Court created the "meaningful access" standard: that "otherwise qualified" people with disabilities must be granted reasonable modifications to ensure they are "provided with meaningful access" to the program at issue. 469 U.S. 287, 300–02 n. 21 (1985). Namely, under Section 504, covered entities must afford persons with disabilities "'equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.'" *Id.* at 305 (citing 45 C.F.R. § 84.4(b)(2)). Meaningful access means equal access.

128. Covered entities have an affirmative obligation under Section 504 to ensure that their benefits, programs, and services are accessible to people with disabilities, including by providing reasonable modifications. *Brooks v. Colorado Dep't of Corr.*, 12 F.4th 1160, 1167 (10th Cir. 2021) (disability "law places an affirmative obligation on public entities to reasonably accommodate qualified individuals with disabilities to allow them to participate in its programs and services."); *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 266 (D.D.C. 2015) ("[B]ecause Congress was concerned that '[d]iscrimination against [people with disabilities] was . . . most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect[,]' the express prohibitions against disability-based discrimination in Section 504 and Title II include an affirmative obligation to make benefits, services, and programs accessible to disabled people.") (quoting *Choate*, 469 U.S. at 295). "[N]othing in the disability discrimination statutes even remotely suggests that covered entities have the option of being passive in their approach to disabled individuals as far as the provision

of accommodations is concerned." *Pierce*, 128 F. Supp. 3d at 269. Thus, failure to implement a reasonable accommodation amounts to disability discrimination. *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) ("The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination.").

129. The Tenth Circuit summarized the applicable analysis for seeking a reasonable accommodation from a covered entity in *Robertson*, 500 F.3d at 1200. The individual must: (1) have a qualifying disability; (2) the public entity must be on notice of the fact that the person has a disability covered by the ADA or Section 504; and (3) the entity must be aware that the individual requires an accommodation. *Id.*

130. Thus, covered federal agencies violate Section 504 if they fail to "provide 'meaningful access,' through the provision of reasonable accommodations, to their programs and services" that otherwise exclude participation due to disability. *Id.* at 1195 (citation omitted); *Punt v. Kelly Servs.*, 862 F.3d 1040, 1048 (10th Cir. 2017). The determination of the reasonableness of an accommodation is highly context-specific and therefore typically left for resolution by a factfinder. *See Brooks*, 12 F.4th at 117.

131. Here, Respondents are breaching their affirmative duty to afford Mr. Ali reasonable accommodations because: (1) he has qualifying disabilities under Section 504; (2) Respondents are on notice of his disabilities; and (3) it is refusing to grant the reasonable accommodation requested.

B. Mr. Ali is a Person with Disabilities Protected by Section 504 Seeking Access to a Federal Benefit or Program

132. Section 504's protections apply to Mr. Ali. His diagnoses include: Multiple Sclerosis, Bell's Palsy, asthma, Bipolar I Disorder with psychotic features, mild neurocognitive disorder, derangement of the left knee, and hip injury. The symptoms of these diagnoses impact and impair Mr. Ali's major life activities, and thus he is a person with a disability as defined by 42 U.S.C. § 12102(1).

133. Mr. Ali seeks meaningful access to a federal program overseen by Respondents. Namely, he is entitled to participate in the process for assessing whether his removal is likely in the reasonably foreseeable future, including any fear-based screenings related to the viability of his removal (hereinafter "immigration-based proceedings"). *See* 8 U.S.C. § 1231(b)(3) (providing restrictions on removal to a country where a person's life or freedom would be threatened); 8 C.F.R. §§ 241.13 (delineating the process for assessing the likelihood of removal in the reasonably foreseeable future); 208.17(d), 1208.17(d) (implementing CAT); 208.31, 1208.31 (providing framework for CAT fear-screening interviews); 1240.10(f), 1240.11(c)(1)(i) (immigration judge advisal and opportunity to apply for protection).

C. Respondents Are on Notice of Mr. Ali's Disabilities

134. Mr. Ali has a lengthy immigration history and Respondents were put on notice of his qualifying disabilities when he was previously in detained removal proceedings. The same stands true today.

i. DHS failed to consider Mr. Ali's disabilities when he was redetained.

135. DHS was on notice of Mr. Ali's disabilities when it detained him, yet failed to adhere to their affirmative obligation to consider alternatives to detention in light of his disability.

136. First, as his prior custodian, ICE was in possession of Mr. Ali's medical records from his April 2018 to June 2019 detention, providing evidence that he is a person with multiple disabilities. Exh. D at 44.

137. Second, ICE's medical records include a medical summary transfer form from Colorado Department of Corrections that lists his disabilities and diagnoses and is dated July 10, 2025—two weeks prior to his redetention. *Id.* at 79–80.

138. Third, Mr. Ali has a disability that is visibly apparent, both because he uses a cane due to his limited mobility and because he exhibits a slight tremor, which is a symptom of his MS diagnosis. Ex. E at ¶¶ 2, 13. There is no indication that ICE's Denver Field Office considered Mr. Ali's disabilities when deciding to redetain him.

ii. DHS is currently on notice of Mr. Ali's disabilities.

139. Mr. Ali's disabilities are well documented in his GEO medical records as well as correspondence with ICE, and, as his custodian, DHS is on notice of his disabilities. *See* Exh. B, Communications with ICE; Exh. D.

D. Despite Notice of Mr. Ali's Worsening Disabilities, Respondents Have Failed to Provide Reasonable Accommodations.

i. Mr. Ali's detention exacerbates the symptoms of his disabilities.

140. First, his detention has led to worsening physical and psychiatric symptoms of his multiple sclerosis. Respondents have been aware of Mr. Ali's significant disabilities since his re-incarceration. Ex. D at 67, 76–77. However, ICE now denies that they have documentation proving his MS diagnosis, despite having sent that exact documentation to undersigned counsel upon request. Exh. B at 5. As a result, Respondents have taken no action to ensure he is receiving the infusion treatment he requires, and which is now three months overdue. Exh. E at ¶ 12.

Although medication can provide long periods of disease stability for MS patients, sudden stoppage in medication is likely to trigger earlier onset disability[9] and new MS activity,[10] and stopping medication makes it more likely that MS inflammation and lesions will return.

141. Due to his continued detention, Mr. Ali cannot access the only type of self-care he can control to reduce his MS symptoms—i.e., "exercise to the greatest degree possible in the three areas of aerobics, strength, and balance," as recommended by the hospital upon his initial diagnosis. Exh. D at 57. Moreover, DHS's failure to provide effective and timely care for the broken screw in Mr. Ali's knee has left him with chronic pain so significant he can barely walk, in stark contrast to his physical state prior to 2018 when he was, for example, able to do 1000 push-ups in a single set. *Id.* Thus DHS's lack of coordinated care exacerbates both Mr. Ali's physical disabilities related to his ability to ambulate and his MS.

142. Due to the fact of his detention, Mr. Ali is also experiencing worsening symptoms of his mental health disabilities, particularly his chronic, severe, and relapsing Bipolar I Disorder and his neurocognitive disorder. Such symptoms—even when Mr. Ali is appropriately medicated—include slowed processing speed, major memory impairment, limited insight, fatigue, cognitive slowdown, and reduced motivation. Ex. G at 92, 97; Exh. E at ¶ 25. Mr. Ali also experiences recurring memories of the abuse he previously survived in ICE detention. Exh. E at ¶ 10. Perhaps most concerning for Mr. Ali, he continues to have audiovisual hallucinations

---

[9] Ilya Kister et al., *Discontinuing disease - modifying therapy in MS after a prolonged relapse-free period: a propensity score-matched study*, 87 J. NEUROL. NEUROSURG. PSYCH., 10 (Jun. 2016), available at: https://pubmed.ncbi.nlm.nih.gov/27298148/.

[10] Eline M. E. Coerver, MD, et al., *Discontinuation of First-Line Disease-Modifying Therapy in Patients with Stable Multiple Sclerosis*, 82 JAMA NEUROLOGY, 2 (Dec. 2024), available at: https://jamanetwork.com/journals/jamaneurology/fullarticle/2827731.

and night terrors that make him highly disoriented and too confused to tell what people, voices, and information are and aren't real. Exh. E at ¶¶ 21–23.

143. The longer Mr. Ali is detained, the more his psychological state will predictably deteriorate. As his psychological state declines, so too does his insight into his own needs, his adherence to medical protocol, his ability to self-advocate, and his daily functioning. Ex. G at 97. Such deterioration has "foreseeable reactions," including "withdrawal, irritability, and rule-violating behavior ('acting out'), which can trigger disciplinary responses (e.g., segregation) and accelerate deterioration." *Id.* Indeed, Mr. Ali had this exact behavioral response the last time he was detained. *Id.*; Exh. C.

144. Further, Mr. Ali's physical and mental disabilities *must* be considered in tandem: MS is a neuroinflammatory disease, meaning that MS progression leads to personality changes, abnormalities, cognitive changes, and worsening of pre-existing psychiatric disorders.[11] *See also* Exh. G at 93 ("These ongoing medical issues further tax his psychological resilience."). Simultaneously, decreased functional status and a worsening psychiatric state is associated with poorer adherence to MS treatment.[12] For Mr. Ali, this means an extremely dangerous cycle where the progression of his MS exacerbates the symptoms of his Bipolar disorder and neurocognitive disorder, and the symptoms of his mental disabilities inhibit his ability to adhere to MS treatment (should such treatment again be offered). The symptoms of Mr. Ali's mental

[11] Celeste Silveira, et al., *Neuropsychiatric Symptoms of Multiple Sclerosis: State of the Art*, 16 PSYCH. INVESTIG. 12 (Dec. 2019), available at: https://pmc.ncbi.nlm.nih.gov/articles/PMC6933139/.
[12] *Id.*

and physical abilities will not only fail to improve as long as he remains detained but will worsen.

ii. Mr. Ali's worsening symptoms prevent his meaningful access in his immigration-related proceedings.

145. The symptoms of Mr. Ali's disabilities are uncontrolled in detention and are preventing him from meaningfully accessing the program or benefit he is entitled.

146. The above-described symptoms already prevent Mr. Ali from participating in his immigration-related proceedings in a number of ways, such as: slow cognitive processing speed impacts his ability to comprehend and respond to proceedings such as imminent deportation; limited insight into his own needs and abilities prevents him from fully comprehending his potentially vulnerability upon deportation; limited self-advocacy prevents him from expressing reasonable fear of deportation to a third country; retraumatization, memory difficulties, and chronic pain hamper his ability to work with counsel; and recurrent disorientation and audiovisual hallucinations prevent his ability to work meaningfully with counsel or engage with DHS. Exh. E at ¶¶ 21–23.

147. Further, as Mr. Ali's detention continues and his psychological and physical state decline, the more likely he is to face greater barriers to his participation in his immigration-related proceedings, including: further decompensating insight into his needs and abilities and decompensating ability and reduced motivation to self-advocate; affective and cognitive instability and impulsivity increasing the likeliness of his "acting out" and being punished with solitary confinement, interfering with his access to counsel; and increased audiovisual hallucinations and psychosis preventing his ability to work meaningfully with counsel or engage with DHS. Exh. G at 97–98.

148. Finally, Mr. Ali's life is threatened by the fact of his detention. His failure to receive adequate MS treatment shortens his lifespan and his continued incarceration and psychological decompensation that may lead to yet another suicide attempt. If Mr. Ali loses his life, he will have no way to meaningfully participate in his proceedings.

E. To Avoid Disability Discrimination, Mr. Ali Requires Release as a Reasonable Accommodation.

149. Release is the sole accommodation available to allow Mr. Ali to access his immigration-related proceedings.

150. If Mr. Ali is released, he will be able to access not only effective, coordinated medical care for his physical and psychological disabilities, but significant psychosocial support from his doctors and family, within a physical environment conducive to his continuing health, and consistent access—physically, emotionally, and cognitively—to his attorneys during his immigration-related proceedings. Indeed, as the psychiatric expert makes clear, his health cannot be restored as long as he remains in ICE custody. Exh. G at 97–98. Crucially, the type of psychosocial support he requires due to medical and psychiatric vulnerabilities is impossible in a detained context, triggering "psychological decline, reduced insight, and diminished ability to function independently." Exh. G at 94; *see* Exh. E at ¶ 26 ("Outside of detention my family can help me. I am calmer and they can repeat what we talked about."). As the psychiatric expert makes clear, his health cannot be restored as long as he remains in ICE custody. Exh. G at 97–98.

151. Release is precisely the type of accommodation contemplated under Section 504. *See* 6 C.F.R. § 15.30(b)(1)(iii); 28 C.F.R. § 39.130(b)(1)(iii) (Section 504 covered entities must afford persons with disabilities "equal opportunity to obtain the same result, to gain the same

benefit, or to reach the same level of achievement as that provided to others."). Release from DHS custody is widely available to people in post-final-order posture, who have already been held for the mandatory 90 days of detention. *Mark H. v. Hamamoto*, 620 F.3d 1090, 1098 (9th Cir. 2010) (finding an accommodation reasonable where it was "available").

F. By Failing to Provide Mr. Ali With the Reasonable Accommodation Requested, Respondents are Violating Section 504 and Engaging in Disability Discrimination

152. Once an entity is on notice of a person's disability, it must affirmatively engage in an inquiry as to whether a reasonable accommodation is required to ensure the individual has equal access as persons without a disability to agency programs, services, and activities. *See Updike v. Multnomah Cnty.*, 870 F.3d 939, 949 (9th Cir. 2017) ("[Section] 504 include[s] an affirmative obligation for public entities to make benefits, services, and programs accessible to people with disabilities."). An agency covered by Section 504 cannot justifiably defend denying a requested modification based on undue hardship if there is a feasible mechanism to ensure the person with a disability is protected from discrimination. *See e.g., Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1303 (D.C. Cir. 1998) (*en banc*) (determining that an interpretation of the hospital's collective bargaining agreement that enabled it to implement its ADA obligations was "distinctly preferred."). Failure to afford a reasonable accommodation amounts to disability discrimination. *See Lane*, 541 U.S. at 537 (holding that lack of reasonable accommodation constitutes disability discrimination); *Cohen v. City of Culver City*, 754 F.3d 690, 700 (9th Cir.2014) (citations omitted) (explaining that disability law's attention to this kind of discrimination is motivated by a recognition that "[e]ven facially neutral government actions that apply equally to disabled and nondisabled persons" may "unduly burden[] disabled persons");

Chapman v. Pier 1 Imports, Inc., 631 F.3d 939, 944–45 (9th Cir. 2011) (acknowledging that the kind of discrimination that often confronts disabled people is not animus, but rather a "subtle" discrimination arising from "thoughtlessness and indifference"); *see also* Margo Schlanger, et. al., 17 HARV. LAW & POL. REV. at 257 (explaining that under Section 504, "liability attaches for disability discrimination based not on discriminatory intent but on failure, intentional or not, to provide individuals with disabilities an opportunity equal to that afforded nondisabled people to participate in or benefit from government programs, where equality could be accomplished by a reasonable modification to the rules or practices governing the service, program, or activity.").

153. ICE is breaching its affirmative duty to afford Mr. Ali reasonable accommodations because: (1) he has qualifying disabilities under Section 504; (2) ICE is on notice of his disabilities; and (3) it is refusing to grant the reasonable accommodation requested.

154. By failing to afford release as a reasonable accommodation, ICE is in violation of its obligations under Section 504. The result is disability discrimination.

H. By taking Agency Action That Violates Section 504 as Well as Its Own Regulations, ICE Has Also Violated the Administrative Procedure Act.

155. In addition to violating Section 504 in and of itself, ICE's detention decisions in Mr. Ali's case violate the APA. Under the APA, agency action that violates federal statute is arbitrary and unlawful and may be set aside by federal courts. 5 U.S.C. § 702(2)(A), (C) (empowering courts to set aside agency action that is "arbitrary and capricious," "otherwise not in accordance with law," or "short of statutory right").

156. As outlined above, ICE's decision to redetain Mr. Ali, refusal to release him, and failure to engage in discussion with his immigration counsel as to reasonable accommodations all violate Section 504. These agency decisions were "not in accordance with law," and "short of

statutory right," and thus run afoul of 5 U.S.C. § 706(2)(A) and (C) and should be set aside by this court.

157. Further, federal agencies may not take agency action that violates their own regulations and policies. 5 U.S.C. § 702(2)(A); *see also Accardi*, 347 U.S. at 260 (agencies must follow their own internal regulations and policies); *Yellin*, 374 U.S. at 121 (recognizing that even if the petitioner does not ultimately prevail, he "should at least have the chance given him by the regulations."). By failing to grant Mr. Ali an accommodation that allows him to access a benefit to which he is entitled–akin to someone without a disability–ICE has violated its own regulations and policies implementing its obligations under Section 504. *See* 6 C.F.R. § 15.30, *et seq.*; *see also* ICE Disability Access Plan, (Aug. 19, 2020), https://www.dhs.gov/sites/default/files /publications/ice_disability_access_plan_508_0 8-19-20.pdf. Such violation is arbitrary and capricious and inconsistent with the APA.

CLAIMS FOR RELIEF

COUNT I
Violation of 8 U.S.C. § 1231(a)(6) and *Zadvydas*
(Unlawful Post-Final Order Detention)

1. Petitioner realleges and incorporates by reference the paragraphs above.
2. The government detains Mr. Ali pursuant to 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens who have administratively final orders of removal.
3. In *Zadvydas*, the Supreme Court interpreted section 1231(a)(6) to contain an implicit timeframe, authorizing detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States." 533 U.S. at 589. The Court established a six-

month period of post-final-order detention, after which the government must provide evidence that removal is likely in the reasonably foreseeable future. *See id.* at 701.

4. In the more than six and a half years since Mr. Ali's removal order became administratively final, the government has failed to identify a single country for removal—and upon information and belief, has not even begun its search for a third country that would accept him.

5. Mr. Ali cannot be deported to Somalia—the only country where he is a citizen—because he has a final grant of deferral of removal pursuant to the CAT to Somalia. Exh. A. He has no legal status in or connections to any other country.

6. Because Mr. Ali cannot be removed from the United States in the "reasonably foreseeable future," his continued detention violates 8 U.S.C. § 1231(1). *See Zadvydas*, 533 U.S. at 701.

7. Accordingly, Mr. Ali respectfully requests that this Court order Respondents to immediately release him from detention.

COUNT II
Violation of the Procedural Due Process Clause of the Fifth Amendment of the U.S. Constitution
(Unlawful Post-Final Order Detention)

8. Petitioner realleges and incorporates by reference the paragraphs above.

9. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention pursuant to § 1231 is removal from the United States. *Demore*, 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 690).

10. The appropriate remedy is an Order from this Court requiring his immediate release.

COUNT III
Violation of the Substantive Due Process Clause of the Fifth Amendment of the U.S. Constitution
(Unlawful Post-Final Order Detention)

11. Petitioner realleges and incorporates by reference the paragraphs above.

12. The Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property[] without due process of law." U.S. Const. amend. V. Moreover, "The Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

13. The Supreme Court has established that noncitizens in post-final-order detention for more than six months must be released from custody if there is no likelihood that they will be removed in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 699–700.

14. More than six months have passed since Mr. Ali was granted deferral of removal, yet the government confined him without any further court proceedings, appellate process, or indication of any plan for removal. Under these circumstances, Mr. Ali's continued detention is completely untethered to any legal basis. *Id.* at 690 ("where detention's goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed."). At this stage, DHS's refusal to release Mr. Ali is "the exercise of power without any reasonable justification" and a violation of due process principles. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

15. The indefinite nature of Mr. Ali's detention under section 1231 violates his substantive due process rights under the Fifth Amendment by depriving him of his "strong liberty interest." *Salerno*, 481 U.S. at 750.

16. Mr. Ali has had a final order of removal for over six and a half years and there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" and the government cannot justify his continued imprisonment. *Zadvydas*, 533 U.S. at 701.

17. Accordingly, Mr. Ali respectfully requests this Court order Respondents to immediately release him.

COUNT IV
Violation of Fifth Amendment Rights to Due Process, 8 U.S.C. § 1231 and Implementing Regulations, and APA, 5 U.S.C. § 706(2)
(Adequate Notice and a Meaningful Opportunity to Present a Fear-Based Claim)

18. Petitioner realleges and incorporates by reference the paragraphs above.

19. The government's detention of Mr. Ali is unlawful because it violates his procedural due process rights because he is entitled to notice and meaningful opportunity to challenge his removal to a third country, in violation of the Fifth Amendment to the U.S. Constitution.

20. The government's detention of Mr. Ali is unconstitutional because it is untethered from any legal basis for detention and lacks "reasonable justification." *County of Sacramento*, 523 U.S. at 845. Mr. Ali's indefinite detention violates his substantive due process rights under the Fifth Amendment given the deprivation of of his "strong liberty interest." *Salerno*, 481 U.S. at 750.

21. The INA, FARRA, and implementing regulations as well as the Constitution mandate meaningful notice and an opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

22. The APA empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

23. The APA compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

24. Agencies must follow their own policies and procedures, particularly when they impact individual rights. *Accardi*, 347 U.S. at 268. Mr. Ali has no adequate remedy at law.

COUNT V
Violation of Fifth Amendment Right to Due Process, 8 U.S.C. § 1231 and Implementing Regulations, and APA 5 U.S.C. § 706(2)(A), (B)
(Unlawful Redetention)

25. Petitioner realleges and incorporates by reference the paragraphs above.

26. *Mathews*, 424 U.S. at 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

27. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. 678, 690.

28. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of

liberty, statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

29. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

30. Respondents had no legitimate, non-punitive objective in revoking Petitioner's order of supervision and Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

31. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or

immunity." 5 U.S.C. § 706(2)(A), (B). The APA also requires a Court to "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

32. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003).

33. The *Accardi* doctrine provides the maxim that an agency action that violated agency procedures, rules, or instructions should be set aside. *See Accardi*, 347 U.S. at 260; *see Ceesay*, 781 F. Supp. 3d at 162 (citing *Rombot*, 296 F. Supp. 3d at 386–89); *see also, e.g.*, *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

34. Petitioner received no notice prior to the revocation of his OSUP and his liberty. Petitioner did not receive an informal interview where he was provided an "opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13 (i)(3). Petitioner's order of supervision was not revoked by the ICE Executive Associate Director or a delegated officer. To date, Mr. Ali has not been provided with any written documentation explaining the basis for his current detention.

35. For these reasons, revoking Petitioner's order of supervision was unlawful because it violates the Fifth Amendment to the U.S. Constitution, contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations, arbitrary and capricious, violated the *Accardi* doctrine, and should be set aside.

COUNT VI

Violation of Section 504 of the Rehabilitation Act and APA by Failing to Afford Release as a Reasonable Accommodation or Comply with Section 504 and its Implementing Regulations

36. Petitioner realleges and incorporates by reference the paragraphs above.

37. Respondents' continued detention of Mr. Ali, an individual with disabilities, denies him equal access to the processes related to whether it is significantly likely that his removal can be effectuated in the reasonably foreseeable future and any related immigration proceedings.

38. Mr. Ali requires a reasonable accommodation under Section 504 and its implementing regulations. 29 U.S.C. § 794; 6 C.F.R. § 15.30, *et seq.*; 28 C.F.R. § 39.130, *et seq*. Release is the only reasonable accommodation that will allow him to meaningfully participate in his immigration proceedings.

39. The APA empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). Agencies must follow their own policies and procedures, particularly when they impact individual rights. *Accardi*, 347 U.S. at 268.

40. Respondents' redetention and continued detention of Mr. Ali without affording him the reasonable accommodation of release to obtain the recommended course of medical and psychiatric treatment violates Section 504 and its implementing regulations. Furthermore, DHS violated the APA when it took agency action with regard to Mr. Ali's redetention and continued detention that violated Section 504 as well as ICE's own regulations and policies implementing Section 504.

PRAYER FOR RELIEF

WHEREFORE, Mr. Ali respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Enjoin Respondents from transferring Mr. Ali outside of the jurisdiction the District of Colorado pending resolution of this case;

c. Pursuant to 28 U.S.C. § 2243, issue an Order to Show Cause or Order to Answer ordering Respondents to show cause within three days why the writ should not be granted;

d. Declare that Respondents' continued detention of Mr. Ali violates the INA, 8 U.S.C. § 1231(a)(6), and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

e. Grant a writ of habeas corpus directing Respondents to immediately release Mr. Ali on his own recognizance or, in the alternative, order his immediate release and afford him a subsequent individualized bond hearing before this Court where: (1) Respondents bear the burden of establishing by clear and convincing evidence that continued detention is justified; (2) alternatives to imprisonment such as community-based alternatives to detention including conditional release, parole, as well as ability to pay a bond must be considered; (3) undue weight cannot be given to allegations underlying dismissed criminal charges; (4) undue weight is not placed on unauthenticated or antiquated documents regarding alleged criminal legal contacts; and (5) Mr. Ali's mental health diagnoses and trauma must be taken into account when considering criminal legal contacts;

f. Require Respondents to provide adequate process prior to removing Mr. Ali to a third country or a country to which his removal has been deferred, in violation of the Constitution as well as statutory and regulatory procedures;

g. Award Mr. Ali his costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant any further relief as this Court deems just and proper.

Dated: October 21, 2025

/s/ Laura Lunn

Laura Lunn
Shira Hereld
ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK
7301 Federal Blvd., Suite 300
Westminster, CO 80030
Telephone: (720) 370-9100
Email: llunn@rmian.org

Fatma Marouf*
Texas A&M School of Law Legal Clinics
1515 Commerce St.
Fort Worth, TX 76102
Telephone: (817) 212-4123
Email: fatma.marouf@law.tamu.edu

Pro Bono Attorneys for Petitioner
*Application for admission to the District of Colorado pending

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Laura Lunn, 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 Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: October 21, 2025

CERTIFICATE OF SERVICE

I, Laura Lunn, hereby certify that on October 21, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Laura Lunn, hereby certify that I have mailed a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on October 21, 2025.

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

Pamela Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

And to:

Krisi Noem and Todd Lyons, DHS/ICE, c/o:
Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528

And to:

Juan Baltazar
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010

And to:

Robert Guadian
Denver ICE Field Office
12445 E. Caley Ave.
Centennial, CO 80111

/s/ Laura Lunn