UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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, U.S. Department of Homeland Security;

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.

Case No. 1:25-cv-03317

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

I. INTRODUCTION

Petitioner-Plaintiff, Iman Ali ("Mr. Ali"), by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's ("DHS"), U.S. Immigration and Customs Enforcement ("ICE") from continuing his unlawful redetention. On October 21, 2025, Mr. Ali, though counsel, requested Respondents-Defendants' position on this motion. It is opposed.

Mr. Ali is a citizen of Somalia and a convert to Christianity who has lived in the United States for over twenty-nine years, since March 1996. He is married to a U.S. citizen, and they have two U.S. citizen sons, who were born in 2006 and 2008. He also has a third son from a prior relationship who is serving in the U.S. military. Mr. Ali suffers from several serious illnesses, including bipolar disorder, post-traumatic stress disorder, anxiety, asthma, and Multiple Sclerosis. Additionally, he suffered a traumatic brain injury and serious physical injuries in a car accident in 2014, requiring multiple surgeries that continue to affect his mobility.

On March 28, 2019, Mr. Ali was granted deferred of removal under the Convention Against Torture ("CAT") by the Aurora Immigration Court, based on a likelihood of being tortured if deported to Somalia. During his immigration proceedings, he was detained for approximately sixteen months, from February 2018 to June 2019. He suffered abuse and medical neglect in detention, including being slammed against a wall, stripped, and put in a "cage" at the West Texas Detention Center, having treatment delayed and denied after he was diagnosed with MS and Bell's Palsy at the Aurora facility, and being denied proper psychiatric care at both facilities.

On July 23, 2025, Mr. Ali was arrested by ICE without any prior notice. Nearly three months later, he still has not received any documents explaining why ICE has taken him into

custody. Nor has he been provided an interview and opportunity to respond. When Mr. Ali refused to fill out travel documents to Somalia, an ICE officer asked him, "How do countries like Kenya and Uganda sound to you?" Subsequently, ICE confirmed with Mr. Ali's Counsel that it is working to secure a third country that might accept him for removal. No additional information regarding specific countries was provided.

ICE began implementing a third country removal policy in February 2025, when it first removed several noncitizens with withholding and CAT grants to Guantanamo Bay, in Cuba, and the CECOT prison in El Salvador. In recent months, DHS began sending people to additional third countries, including Panama, Costa Rica, Mexico, South Sudan, and Eswatini. Most recently, Ghana accepted people deported from the United States, only to return some of them to countries where their removal was prohibited under U.S. law due to the likelihood of future persecution or torture.

Mr. Ali's detention is unlawful and release is necessary because: (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.

Mr. Ali meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm absent an order from this Court enjoining the government from continuing his redetention and deporting him. Because holding federal agencies accountable to the demands of the U.S. Constitution, statues, and regulations is in the public interest, the balance of equities and public interest are also strongly in Mr. Ali's favor.

II. STATEMENT OF FACTS AND CASE

Mr. Ali is a citizen of Somalia who was born in 1983 and entered the United States in 1996 at the age of thirteen. He and his family entered the United States as refugees after fleeing extreme violence in Somalia during the civil war. Mr. Ali is married to a U.S. citizen and has four U.S. citizen children (including a U.S. citizen stepdaughter), and two U.S. citizen grandchildren. He became a born-again Christian while incarcerated. In February 2013, ICE officers arrested and detained him due to his convictions. He was told that he did not qualify for any relief from removal and was ordered deported on May 2, 2013. However, he was not deported. After being detained for six months, ICE released him but required him to check in regularly.

Nearly five years later, on February 14, 2018, ICE again detained Mr. Ali. From February 23, 2018, to March 2, 2018, Mr. Ali was detained at the West Texas Detention Facility ("WTDF"), where he was abused by correctional officers, confined nearly naked in a cage, and denied proper medical care. He was scheduled for deportation to Somalia on March 29, 2018, but received an emergency stay of removal. In April 2018, Mr. Ali was transferred to the Denver Contract Detention Facility ("Aurora facility") in Aurora, Colorado. He filed a motion to reopen his case based on changed country conditions in Somalia that was granted by the Board of Immigration Appeals in October 2018. Ultimately, an immigration judge ("IJ") ordered him removed and

granted deferred of removal to Somalia under the CAT on March 28, 2019. ICE released him from detention a few months later, in June 2019.

On July 23, 2025, nearly six years after he was released from immigration detention, ICE arrested Mr. Ali. To date, he has not received any documents explaining why ICE has taken him into custody. Nor has he been provided a custody interview and opportunity to respond. ICE has indicated to Mr. Ali that it will try to remove him to his country of origin or a third country. Mr. Ali has reminded ICE officials on multiple occasions that he has protection against his removal to Somalia. ICE has indicated to Mr. Ali's counsel that it is working to secure a third country that might accept him for removal, though no information regarding formal requests has been provided to date.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 65 authorizes courts to enter preliminary injunctions and issue temporary restraining orders ("TRO"). Fed. R. Civ. P. 65(a), (b). The Court exercises its discretion when deciding whether to issue a TRO. *Allen W. Hinkel Dry Goods Co. v. Wichison Indus. Gas Co.*, 64 F.2d 881, 884 (10th Cir. 1933). The procedure and standards for determining whether to issue a TRO mirror those for a preliminary injunction. The Supreme Court has explained that temporary restraining order or preliminary injunction is warranted when a party is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). The Tenth Circuit has held that "a showing of probable irreparable harm is the single most important prerequisite" for a preliminary injunction or temporary restraining order, and "the moving party

must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered." *Dominion Video Satellite v. Echostar Satellite Corp.*, 356 F.3d 1256, 1260–61 (10th Cir. 2004) (quotation and citation omitted).

IV. ARGUMENT

Mr. Ali satisfied all three factors for a temporary restraining order and preliminary injunction. First, he is likely to suffer irreparable harm: medical decline in detention, exacerbating his serious physical and mental illnesses, separation from his family, and risk of removal to a third country where he may face persecution or torture. Second, he is likely to succeed on the merits of his claim because his detention is unlawful, in violation of the Due Process Clause of the Fifth Amendment, statutes, and regulations. Third, the balance of equities tips in his favor, as the threatened injury outweighs any harm that the preliminary injunction may cause the opposing party. Finally, the public interest favors requiring Respondents to follow the law.

A. Mr. Ali will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Ali will suffer irreparable harm if his unlawful detention continues. First, each day Mr. Ali is detained in violation of his constitutional rights, he faces irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976); *Free the Nipple—Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805–06 (10th Cir. 2019) (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012)). The due process violation alone is sufficient to meet this standard.

Second, Mr. Ali provides cogent evidence of individualized harm resulting from his continued detention, further supporting an irreparable harm finding. *See, e.g.*, *Burnham v. Villani*, 2023 WL 6464914 at *3 (D. Colo. Oct. 4, 2023) (holding that serious medical ailments that could lead the plaintiff to require a colostomy bag constituted irreparable harm); *Carranza v. Reams*,

614 F. Supp. 3d 899, 917 (D. Colo. 2020); *Essien v. Barr*, 457 F. Supp. 3d 1008, 1019 (D. Colo. 2020); *Castillo v. Barr*, 449 F. Supp. 3d 915 (C.D. Cal. 2020); *Coronel v. Decker*, 449 F. Supp. 3d 274, 281 (S.D.N.Y. 2020); *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 218 (D.D.C. 2020).

Mr. Ali is being held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail . . . has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972). Mr. Ali is separated from his wife, children, and grandchildren in detention, and cannot work to help support them.

Additionally, the government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care people in detention received for suicide watch, and holding people in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[1]

As explained above, Mr. Ali suffers from multiple mental and physical illnesses. He has bipolar disorder with psychotic features and experiences auditory and visual hallucinations in immigration detention. His traumatic brain injury impacts his memory, and he reports frequent feelings of confusion. Mr. Ali has a history of three prior suicide attempts, which took place when he was experiencing prolonged detention. In addition, Mr. Ali has Multiple Sclerosis ("MS"), which requires an infusion therapy that he is not receiving in detention. He also has physical injuries to his knee and pelvis that cause him severe pain, making it difficult for him to walk.

[1] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed Feb. 6, 2024).

These illnesses and injuries, combined with the poor conditions in detention, place him at particularly high risk of irreparable harm. As explained above, he is not receiving adequate physical or psychiatric care in detention, and his health has already suffered and is likely to continue to deteriorate if he remains detained.

A TRO or preliminary injunction is necessary to prevent Mr. Ali from suffering such irreparable harm.

B. Mr. Ali is Likely to Succeed on the Merits of His Claims

1. Violation of Due Process Because Removal Is Not "Reasonably Foreseeable"

First, Mr. Ali is likely to succeed on his due process claim because his removal is not reasonably foreseeable. "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 v. Davis*, 533 U.S. 678, 693 (2001) (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). Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen'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). "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen'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 redetain 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).

Under the Immigration and Nationality Act ("INA"), a non-citizen with a final order of removal who is not removed within the 90-day removal period following a removal order "shall be subject to [an order of] supervision." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period"). Detention may only continue beyond the 90-day removal period if the noncitizen is 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. 8 U.S.C. § 1231(a)(3). Furthermore, the Supreme Court has held that, 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)]." *Zadvydas*, 533 U.S. at 699–700.

Here, Mr. Ali's removal is not reasonably foreseeable, and he should therefore be released under *Zadvydas*. His release may be conditioned "on any of the various forms of supervised release that are appropriate in the circumstances." *Id.* at 700. Mr. Ali cannot be deported to Somalia because he was granted deferred of removal to that country, and DHS has provided no notice of intent to remove him to any other country. Nor has DHS provided any evidence that it can removed Mr. Ali in the reasonably foreseeable future.

2. Violation of Procedural Due Process

Mr. Ali's detention is also unlawful because it violates procedural due process. There are two key aspects of this claim. First, Mr. Ali's arrest and detention by ICE in 2025 violates

procedural due process. Second, any removal to a third country without the opportunity to present a fear-based claim would violate procedural due process. Under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), courts must 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.

a. Unlawful Re-Detention in 2025

Mr. Ali's redetention by ICE in July 2025, without any notice or opportunity to respond, violates procedural due process. The first factor, the private interest at issue, favors Mr. Ali. "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 v. Davis*, 533 U.S. 678, 690 (2001).

The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Mr. Ali. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that an order of supervision can be revoked. 8 U.S.C. § 1231(a)(3). Regulations further 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. 8 C.F.R. §§ 241.4, 241.13. As explained further below, 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 Mr. Ali, who is neither dangerous nor a flight risk.

The third factor, the government's interest, also favors Mr. Ali. 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. 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.

b. Removal to a Third Country Without the Opportunity to Present a Fear-Based Claim

Removal to a third country without the opportunity to present a fear-based claim would also violate procedural due process. *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."). The Supreme Court has stressed that before being spirited away, noncitizens are "entitled to notice and an opportunity to challenge their removal." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025).

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[.]").

Prior to removal to a third country, Mr. Ali must be given these same protections. 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). Numerous district courts across the country have found similarly. *See, e.g., Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) ("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.") (citing *Mathews,* 424 U.S. at 349); *Mahdejian v. Bradford*, No. 9:25-CV-00191, 2025 WL 2269796, at *4 (E.D. Tex. July 3, 2025) ("Noncitizens have a right to meaningful notice and opportunity to be heard before being deported to a third country."); *Sagastizado Sanchez v. Noem, et al.*, Case 5:25-cv-00104, ECF No. 26 (S.D. TX, Oct. 2, 2025) (applying 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"); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025) (finding 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"); *Vaskanyan v. Janecka,* No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *7 (C.D. Cal. June 25, 2025) (requiring "adequate notice and a meaningful opportunity to raise any fear-based claim under CAT prior to effectuating [petitioner's] removal.").

When applied to the present circumstances, the *Mathews* factors weigh heavily in Mr. Ali's favor. *See Mathews*, 424 U.S. at 335. First, Mr. Ali has a private interest at stake: his right to have his removal withheld from a country where he is more likely than not to be tortured. To date, Mr. Ali has not been provided with notice or a meaningful opportunity to present a fear-based claim to protect against his removal to a third country, yet he remains detained, 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 likely he will face torture. As such, he seeks to raise a claim for CAT protection to any country where the government intends to effectuate 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.

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.

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.

3. Violation of Administrative Procedure Act

Under the Administrative Procedure Act ("APA"), agency action that violates a federal statute is arbitrary and unlawful and may be set aside by federal courts. 5 U.S.C. § 702(2)(A), (B), (C) (empowering courts to set aside agency action that is "arbitrary and capricious," "otherwise not in accordance with law," "short of statutory right," or "contrary to constitutional right"). Judicial review is authorized for final agency actions. 5 U.S.C. § 704. 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). Here, Mr. Ali challenges two final agency actions that violate the APA: (1) ICE's revocation of his order of supervision; and (2) ICE's third country removal policy. Both actions are arbitrary, capricious, and contrary to law.

a. ICE's Revocation of Mr. Ali's Order of Supervision Was arbitrary, capricious, and contrary to law.

Respondents' revocation of Mr. Ali's order of supervision was not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances. 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.* Here, there is no indication of any such change in circumstances.

Moreover, the regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 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). 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 U.S.C. § 1231(a)(3); 8 C.F.R. §§ 241.4(l)(1); 241.13(i)(3).

Here, there is no evidence that the ICE Executive Associate Director revoked Mr. Ali's order of supervision. Nor were any findings made by a field office director or other delegated official that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. Additionally, Mr. Ali was never given notice of the reasons for revocation, an interview, or any opportunity whatsoever to respond. The revocation of his order of supervision therefore violated the statute and regulations and occurred without any consideration of the serious constitutional concerns discussed above. Such agency action should be set aside as contrary to law and as arbitrary or capricious.

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). As previously discussed, Respondents violated agency regulations governing who may properly revoke an order of supervision and the findings that must be made prior to revocation. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release," and Petitioner "is entitled to release on that basis alone." *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).

b. ICE's Third Country Removal Policy is Arbitrary, Capricious, and Contrary to Law

In addition, DHS's third country removal policy violates the APA, since it fails to follow non-discretionary statutory duties requiring notice and a meaningful opportunity to present a fear-based claim, violates CAT's implementing regulations, and violates regulations requiring immigration judges to notify noncitizens of proposed countries of removal and advise them of

their right to apply for protection if they fear persecution or torture. *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. §§ 208.17–18; 1208.17–18 (implementing CAT); 8 C.F.R. §§ 1240.10(f), 1240.11(c)(1)(i) (immigration judge advisal and opportunity to apply for protection); *see also Tomas-Ramos v. Garland*, 24 F.4th 973, 977 (4th Cir. 2022) (recognizing that 8 U.S.C. § 1231 and CAT's implementing regulations provide noncitizens with a pathway to seek withholding of removal and CAT protection "to prevent removal to a particular country").

In recent months, courts have relied on this logic to enjoin third country removals. *See Arostegui Maldonado*, 2025 WL 2280357, at *13 (granting injunctive relief, recognizing that the notice and opportunity to seek fear-based relief requirements are non-discretionary); *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *8 (D. Md. Aug. 25, 2025) ("Where an expression of fear of removal to a third country is comparable to an expression of fear of removal to one's home country, such an interview is likely required under 8 U.S.C. § 1231(b)(3)(A) and 8 C.F.R. § 208.31.") (citing *Tomas-Ramos*, 24 F.4th at 977).

4. Violation of Section 504 of the Rehabilitation Act

Because Mr. Ali's detention and its impact on the symptoms of his disabilities prevent him from meaningfully accessing proceedings related to challenging his unlawful detention or implicating the likelihood of his removal, Section 504 of the Rehabilitation Act requires that he be granted release as a reasonable accommodation.

Section 504 prohibits discrimination based on a disability in programs, services, or activities conducted by U.S. federal agencies, including DHS and the Executive Office for Immigration Review ("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). Courts have held that Section 504 applies 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) (ordering the appointment of a "qualified representative" for persons in detention whose mental competence was in question); *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).

Mr. Ali's mental and physical illnesses qualify as disabilities under the Rehabilitation Act, which defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1). Mr. Ali has Bipolar I Disorder with psychotic features, MS, asthma, a mild neurocognitive disorder, derangement of the left knee, and a hip injury, which substantially limit his life activities. 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 based on disability.

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)). Covered entities have an affirmative obligation to ensure that their benefits, programs, and services are accessible to people with disabilities, including by providing reasonable modifications. Failure to implement a reasonable accommodation amounts to disability discrimination. *Tennessee v. Lane*, 541 U.S. 509, 531 (2004).

The Tenth Circuit summarized the applicable analysis for seeking a reasonable accommodation from a covered entity in *Robertson v. Las Animas County Sheriff's Dept.*, 500 F.3d 1185, 1200 (10th Cir. 2007). 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.* 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); *see also Punt v. Kelly Servs.*, 862 F.3d 1040, 1048 (10th Cir. 2017); *Brooks v. Colorado Dep't of Corr.*, 12 F.4th 1160, 1167 (10th Cir. 2021).

Respondents' continued incarceration of Mr. Ali denies him "meaningful access" to benefits afforded under the INA because of his physical and psychiatric disabilities. Namely, Mr. Ali 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).

Mr. Ali's continued confinement is exacerbating the symptoms of his physical and mental disabilities, which impedes his access to his immigration-based proceedings. First, Mr. Ali cannot access necessary care he requires to mitigate the symptoms of his disabilities while he is detained. Second, due to his continued detention, Mr. Ali cannot engage in sources of self-care to reduce his own symptoms, including controlling his diet and exercise. Third, Mr. Ali already struggles to assist counsel with the preparation of his case due to the symptoms of his disabilities, and his prolonged detention will likely cause further deterioration of his memory and erode his lucidity. Finally, as Mr. Ali's psychological state deteriorates, so too does his daily functioning and self-advocacy skills, further impeding his ability to participate in any process to challenge his unlawful removal. For example, Mr. Ali may become unable to understand the third country removal process; lack insight into his own vulnerabilities upon deportation; fail to understand his need to express reasonable fear; be unable to effectively articulate such fear; or even be unable to comprehend the reality of possible deportation.

Release from detention is the sole accommodation that would allow Mr. Ali to access immigration-based proceedings. If released, he would be able to access effective, coordinated medical care for his physical and psychological disabilities, along with the significant psychosocial support from his doctors and family, within a physical environment conducive to his continuing health.

Release is precisely the type of reasonable 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"). By failing to afford release as a reasonable accommodation, ICE is engaging in disability discrimination in violation of its obligations under Section 504.[2]

C. The Balance of Equities and Public Interest Weigh Heavily in Mr. Ali's Favor

The balance of hardships and the public interest both tip strongly in Mr. Ali's favor. Where, as here, the government is a party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). When assessing whether a TRO or preliminary injunction is warranted, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24.

The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice, and the public interest is best served by ensuring that constitutional rights and statutes are upheld. Federal legislative enactments, as "democratic determinations of the public interest," offer useful guidance to courts analyzing the public interest prong of the preliminary injunction inquiry. *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) (quoting

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[2] ICE's violation of Section 504 and its implementing regulations in 6 C.F.R. § 15.30, *et seq.*, also constitutes agency action contrary to law under the APA.

Heideman v. South Salt Lake City, 348 F.3d 1182, 1191 (10th Cir. 2003)); *see also O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft*, 342 F.3d 1170, 1174 (10th Cir. 2003) (affirming a preliminary injunction because "failure to vindicate religious freedom protected under RFRA—a statute specifically enacted by Congress, as representative of the public ... — would be adverse to the public interest"); *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."); *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *Andujo-Andujo v. Longshore*, 2014 WL 2781163 at *6 (D. Colo. June 19, 2014) (reasoning that ICE's "compliance with the law serves the public interest"). Therefore, the government cannot allege harm arising from having to comply with the Constitution, INA, or regulations. If a TRO or preliminary injunction is not entered, the government would effectively be granted permission to detain and deport Mr. Ali in violation of law.

Further, any burden imposed by requiring DHS to refrain from detaining and deporting Mr. Ali is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he continued to be detained or is deported. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."). Courts granting temporary restraining orders in immigration habeas cases have routinely found that these factors weigh in a petitioner's favor. *See, e.g., Arostegui-Maldonado,* 2025 WL 2280357, at *10 ("True, there may be a generalized public interest in the enforcement of the country's immigration laws. But that

cannot mean that Respondents enjoy an unfettered right to detain noncitizens in contravention with their Fifth Amendment rights."); *Pham v. Becerra,* No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (noting the administrative burden of a bond hearing is minimal when weighed against a petitioner's severe hardships); *Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005, 1017 (C.D. Cal. 2020) ("the public interest benefits from a preliminary injunction that expedites a bond hearing to ensure that no individual is detained in violation of the Due Process Clause."). Therefore, the balance of equities and public interest both overwhelmingly favor granting a TRO or preliminary injunction requiring Mr. Ali to be released.

D. In the Alternative, Mr. Ali Requests that Respondents be Enjoined from Transferring Him Out of This District While the Case is Pending.

If the Court does not order Mr. Ali immediately released, Mr. Ali respectfully requests that, at a minimum, this Court enjoin Respondents from transferring him outside the District of Colorado during the pendency of his underlying habeas case. In a recent case in this district, the respondents transferred the petitioner to an ICE facility in Arizona one day before she was able to get her habeas petition on file with this Court, thus frustrating this Court's exercise of jurisdiction. *See Fuentes v. Choate*, 2024 WL 2978285 (D. Colo. June 13, 2024). To preserve this Court's jurisdiction over this matter, facilitate judicial review of Mr. Ali's significant constitutional and statutory claims, and preserve judicial resources by avoiding the necessity of refiling this case elsewhere, Mr. Ali respectfully asks this Court to enjoin his transfer outside this district during the pendency of this case.

CONCLUSION

For all the above reasons, this Court should find that Mr. Ali warrants a TRO or preliminary injunction ordering that Respondents release him from unlawful detention.

Dated: October 21, 2025

/s/ Laura Lunn
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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, pursuant to Fed. R. Civ. P. 5 and provided a courtesy copy to:

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