

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03317-RBJ

IMAN MOHAMED ALI,

Petitioner-Plaintiff,

v.

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

ROBERT HAGAN,<sup>1</sup> 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,

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

Respondents-Defendants.

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**FEDERAL DEFENDANTS' CONSOLIDATED RESPONSE TO  
PETITION FOR WRIT OF HABEAS CORPUS [ECF NO. 1] AND  
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION [ECF NO. 3]**

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Robert Hagan, Kristi Noem, Todd Lyons, and Pam Bondi (the "Federal Respondents") hereby submit their consolidated response to this Court's Order to Show Cause, ECF No. 9, and Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction ("Motion"), ECF No. 3.

**INTRODUCTION**

Petitioner Iman Mohamed Ali is a noncitizen who was ordered removed, was

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<sup>1</sup> Robert Hagan is substituted for Robert Guadian pursuant to Fed. R. Civ. P. 25(d).

released, committed crimes, had his release revoked, and has been in detention since July 2025 while awaiting his removal. He challenges his detention on the ground that it violates (1) the provision of the Immigration and Nationality Act ("INA") that governs the detention of noncitizens who have been ordered removed, 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and his substantive due process rights, on the ground that his detention is unconstitutionally prolonged because there is no significant likelihood of his removal in the reasonably foreseeable future; (2) the Administrative Procedure Act ("APA") and his procedural due process rights, under the *Accardi* doctrine, on the ground that Respondents, in revoking his release, failed to abide by a regulation, 8 C.F.R. § 241.4(l); (3) the INA, APA, and his procedural due process rights, on the ground that Respondents might deport him to a third country without permitting him the opportunity to seek protection from such removal; and (4) Section 504 of the Rehabilitation Act, on the ground that his conditions of confinement warrant his release, which he argues is the only reasonable accommodation that he believes will allow him to meaningfully participate in his immigration proceedings. See ECF No. 1 at 54-60. Petitioner seeks his immediate release. ECF No. 1 at 61.

The Court should deny the Petition and the Motion for Preliminary Injunction. Petitioner's detention is authorized by statute and is not unconstitutionally prolonged; rather, it is less than the six-month presumptively constitutional period endorsed in *Zadvydas*. He has not shown any regulatory violation that renders his detention unconstitutional. And his challenges to the potential for third-country removal and to his

conditions of his detention are not properly presented in this habeas petition, and suffer from other defects as well.

## BACKGROUND

### A. Legal Background

The INA authorizes the detention of noncitizens who are subject to removal orders. In general, the Department of Homeland Security (DHS) must remove noncitizens who have been ordered removed “within a period of 90 days,” known as the “removal period.” 8 U.S.C. § 1231(a)(1)(A). During the removal period, detention of the noncitizen is mandatory until removal occurs. *Id.* § 1231(a)(2). But there are various reasons why a noncitizen may not be removed within the removal period. For example, sometimes DHS is not able to arrange for removal during the removal period.

Congress has authorized the detention of certain aliens beyond the statutory removal period. For example, once the initial 90-day removal period is up, DHS may continue to detain aliens, like Petitioner, who are removable because they have committed an aggravated felony or a drug-related offense. 8 U.S.C. §§ 1227(a)(2)(A)(iii), (B)(i) (identifying such aliens as deportable); 8 U.S.C. § 1231(a)(6) (permitting the detention of aliens deportable for these reasons beyond the 90-day removal period); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021) (a noncitizen may be detained longer than 90 days pending removal if he is removable due to violations of criminal law). And in *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is “presumptively reasonable.” 533 U.S. at 700-01.

An alien with a final order of removal may be released under DHS regulations. See 8 C.F.R. §§ 241.4, 241.13. The regulations at 8 C.F.R. § 241.13 permit noncitizens, like Petitioner, to seek release if they can “provide[] good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future.” 8 C.F.R. § 241.13(a).

The release of a noncitizen may be revoked, however. 8 C.F.R. § 241.13. Immigration and Customs Enforcement (“ICE”) may re-detain the alien if they violate a condition of release, and it may continue the alien’s detention “for an additional six months in order to effect the alien’s removal, if possible.” *Id.* § 241.13(i)(1). The regulations provide that the alien “will be notified of the reasons for revocation of his or her release” and will receive “an initial informal interview promptly after his or her return to . . . custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* § 241.13(i)(3).

**B. Factual Background**

Petitioner Ali is a native and citizen of Somalia. Declaration of Irma Quinones, attached as Exhibit A, at ¶ 4. On March 8, 1996, he was admitted to the United States as a refugee. *Id.* ¶ 5. On September 3, 1997, he adjusted status to a lawful permanent resident retroactive to March 8, 1996. *Id.* ¶ 6.

On June 11, 2004, Petitioner was convicted of possession of cocaine with intent to distribute. *Id.* ¶ 7. He was sentenced to 2 years in prison. *Id.* On January 10, 2006, he was convicted of felony attempted escape. *Id.* ¶ 8. He was sentenced to one year of imprisonment. *Id.*

In the course of its normal duties, ICE ran a routine records check that revealed Petitioner's convictions, and ICE determined that those convictions subjected him to removal from the United States. *Id.* ¶ 9. On April 9, 2013, ICE encountered Petitioner and arrested and detained him subject to the resolution of removal proceedings. *Id.* ¶ 10. The same day, DHS ICE issued a Notice to Appear, initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 11. The NTA charged Petitioner with being deportable from the United States pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) (alien who has been convicted of an aggravated felony). *Id.*

On May 2, 2013, Petitioner appeared before the Immigration Judge ("IJ") and declined to pursue an application for relief from removal. *Id.* ¶ 12. The IJ ordered him removed from the United States to Somalia. *Id.* Both parties waived appeal. *Id.*

On July 30, 2013, ICE released Petitioner from detention under an Order of Supervision ("OSUP") because it had not been able to effectuate his removal. *Id.* ¶ 13. The OSUP placed several conditions on Petitioner, including a prohibition against committing crimes and the requirement to report to or check in with ICE. *Id.*

Over the next few years, Petitioner failed to report or check in with ICE on many occasions. *Id.* ¶ 15. Additionally, in November 2015, he was convicted of aggravated motor vehicle theft. *Id.* ¶ 14.

On February 9, 2018, ICE received Petitioner's travel document from the Embassy of Somalia. *Id.* ¶ 16. On February 14, 2018, ICE revoked Petitioner's release on supervision and took him into custody to effectuate his removal. *Id.* ¶ 17.

Thereafter, the Immigration Judge ordered Petitioner removed to Somalia but granted

deferral of removal under the Convention Against Torture. *Id.* ¶ 29.

In June 2019, ICE released Petitioner from detention under an OSUP because it had not been able to effectuate his removal to a third country pursuant to 8 U.S.C. § 1231(b). *Id.* ¶ 30. The OSUP placed several conditions on Petitioner, including a prohibition against committing crimes. *Id.* Additionally, the OSUP warned Petitioner that a violation of the terms of release could result in him being taken into custody. *Id.*

Petitioner committed more crimes while on this OSUP. *Id.* ¶ 31. On January 26, 2023, he was convicted of being a felon in possession of a weapon. *Id.* He was sentenced to 2 years in prison. *Id.* On January 12, 2024, he was again convicted of being a felon in possession of a weapon. *Id.* He was sentenced to 30 months in prison. *Id.*

On July 23, 2025, ICE encountered Petitioner as he was being released from state custody. *Id.* ¶ 32. ICE revoked his release on supervision and took him into custody to effectuate his removal. *Id.* ICE records indicate that when Petitioner was taken into custody, ICE officials went over his country of citizenship, his nationality, how he entered the United States, his criminal history, his military history (if any), and the status of his immediate family in the United States. *Id.* ¶ 33. He was advised of his right to speak with the consulate of his home country of citizenship and afforded an opportunity to do so. *Id.* ICE officials ensured that Petitioner has no pending immigration petitions or applications, and in-processed Petitioner as an alien subject to a final order of removal for detention pending removal. *Id.* ICE officials also served Petitioner with a copy of his warrant for arrest and final order of removal. *Id.* After

processing, ICE transferred Petitioner for detention at the Aurora Contract Detention Facility. *Id.*

On October 18, 2025, ICE conducted a post-order custody review pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 34. ICE determined that Petitioner failed to meet the criteria for release and continued to detain Petitioner pending removal. *Id.*

Petitioner remains detained under 8 U.S.C. § 1231, based on his final order of removal. See Ex. A ¶¶ 12, 29 (noting that Petitioner is subject to a final order of removal). ICE, in coordination with the Department of State, continues to pursue avenues for Petitioner's removal from the United States. *Id.* ¶ 35.

## ARGUMENT

### I. **Petitioner is not entitled to release from custody.**

#### A. **Petitioner's detention does not violate the INA or his substantive due process rights as interpreted by *Zadvydas*.**

In Count I and Count III, Petitioner asserts that his deportation is not reasonably foreseeable and that, as a result, his continued detention violates the INA and substantive due process, as interpreted by the Supreme Court in *Zadvydas*, 533 U.S. 678. See ECF No. 1 at 54-56. But as an alien convicted of an aggravated felony and a drug offense, his detention beyond the 90-day statutory removal period is authorized by statute. And because *Zavydas* provides for a presumptively reasonable detention period of six months, and Petitioner has been detained for less than four months, he has not shown that his detention is unconstitutionally prolonged.

#### 1. **The INA permits Respondents to detain Petitioner.**

As set forth above, § 1231 governs detention after entry of a final order of

removal. While the statutory removal period generally runs for 90 days, 8 U.S.C. § 1231(a)(1)(A), (B)(i), an alien may nonetheless be detained “beyond the removal period” if they are “removable under section. . . 1227(a)(2).” *Id.* § 1231(a)(6). An alien is removable under § 1227(a)(2) if, among other things, they have been “convicted of an aggravated felony” or have been “convicted of a violation of. . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance.” 8 U.S.C. § 1227(a)(2)(A)(iii), (B)(i).

Here, Petitioner was convicted of an aggravated felony and of an offense relating to a controlled substance. Ex. 1 ¶ 11. The statute thus authorizes his detention beyond the 90-day removal period. While Petitioner argues that the statute does not authorize his continued detention in the absence of an assessment that he is a flight risk or a danger to the community, ECF No. 1 at 59, those conditions do not apply to an alien like Petitioner. See 8 U.S.C. § 1231(a)(6) (permitting detention beyond the removal period if the alien is “removable under section. . . 1227(a)(2). . . or has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal” (emphasis added)). Petitioner is thus properly detained under the INA.

## **2. Petitioner’s claim is premature.**

In *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is “presumptively reasonable.” 533 U.S. at 700-01. Moreover, the Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, the Court held that after six months, “once the alien provides good reason to believe that there is no significant

likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.*; see also *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("The onus is on the alien to 'provide good reason to believe that there is no such likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'") (cleaned up) (quoting *Zadvydas*, 533 U.S. at 701). But the Court in *Zadvydas* clarified that "an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701.

Because Petitioner's has been detained for less than four months (he was taken into custody on July 23, 2025), his detention under § 1231 remains constitutional, as the six-month presumptively reasonable period has not yet expired. Under *Zadvydas*, this defeats his argument. See, e.g., *Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013) ("For an alien to state a claim under *Zadvydas*, he ... must show post-removal order detention in excess of six months ...") (internal quotation marks and citation omitted); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011) (finding premature any challenge to the petitioner's continued post-removal-order detention to be where he had not been in post-removal-order detention longer than the presumptively reasonable six-month period set forth in *Zadvydas*); *Bokole v. McAleenan*, 1:18-cv-00583-JB-LF, 2019 WL 2024922, at \*5 (D.N.M. May 8, 2019) (finding that the petitioner's claim challenging the constitutionality of his current detention was premature because the presumptively reasonable six month period had not yet expired).

Petitioner argues that *Zadvydas*'s six-month window has come and gone because the "removal period" began the date his removal became administratively final—*i.e.*, in 2019. ECF No. 1 at 30-31, *citing* 8 U.S.C. § 1231(a)(1)(B)(i)-(ii). But this is incorrect. *Zadvydas* is concerned not with the ticking of an administrative clock about removal proceedings, but specifically with the length of a noncitizen's detention. Petitioner has not been *detained* since 2019; he has been detained since July 23, 2025, so he remains within the six-month period under which it is presumptively constitutional for the government to detain him as it makes efforts to arrange his removal.

**3. Petitioner's assertion that he cannot be removed within six months is conclusory and speculative.**

Petitioner argues that he cannot be removed in the reasonably foreseeable future because, even if his removal to a third country under 8 U.S.C. § 1231(b) could be effectuated, he is entitled to additional process. ECF No. 1 at 32-36. This argument assumes that he will have a good-faith basis to seek fear-based protection from removal to the country or countries to which his removal is proposed. But, as Petitioner acknowledges, he has no information about which country he might be removed to. *See id.* at 32. In the absence of such information, his argument is conclusory and speculative.

**B. Petitioner's detention does not violate procedural due process.**

In Counts II and V, Petitioner asserts that his detention violates his right to procedural due process because, he argues, (1) he was entitled to, but did not receive, a pre-deprivation hearing prior to the revocation of his OSUP; and (2) that ICE failed to comply with the procedures set forth at 8 C.F.R. § 241.4(l). ECF No. 1 at 55, 57-8.

Neither argument shows that his current detention is unlawful.

**1. Petitioner was not entitled to a hearing prior to revocation of his OSUP.**

Petitioner contends that because the revocation of his OSUP deprived him of liberty, he was entitled to a pre-deprivation hearing. As an initial matter, this claim finds no support in the INA or in the regulations. Specifically, nothing in the INA provides him a right to a pre-deprivation hearing before his release could be revoked. Nor do the regulations. Because Petitioner was previously released after a determination that, at that time, his removal was not significantly likely in the reasonably foreseeable future, the revocation of his release is governed by 8 C.F.R. § 241.13(i). But that provision offers no pre-revocation process.

In the alternative, Petitioner seeks to rely on general procedural due process principles. In support, he cites *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972) and *Young v. Harper*, 520 U.S. 143, 148 (1997). ECF No. 1 at 39. Neither case is concerned with immigration detention. Rather, *Morrissey* stands for the rule that a *parolee* is entitled to process “to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions.” 408 U.S. at 485. *Young* applies the same rule to a preparole supervised release program with only “phantom differences” from ordinary parole. 520 U.S. at 149.

These cases are inapposite, for at least two reasons. First, they mandate *post-deprivation* process, not the pre-deprivation process that Petitioner claims was required. *Morrissey*, 408 U.S. at 485 (“due process would seem to require that some minimal

inquiry be conducted ... as promptly as convenient after arrest"); *Young*, 520 U.S. at 152-3 (holding that revocation of parole-like supervised release requires the process mandated by *Morrissey*).

Second, the alleged parole violations at issue in *Morrissey* and *Young* were not criminal convictions. In contrast, Petitioner's OSUP was revoked because he violated its prohibition against committing crimes. See Ex. A ¶ 30. Specifically, he was convicted, twice, of being a felon in possession of a weapon. *Id.*; ECF No. 1 at ¶¶ 34-35. These convictions—the validity of which Petitioner does not appear to dispute—“were obtained following the full procedural protections our criminal justice system offers.” *Demore v. Kim*, 538 U.S. 510, 513 (2003). Accordingly, Petitioner has not shown how he would have challenged those convictions through any pre-deprivation process, or how he was prejudiced by the absence of any pre-deprivation process before the agency relied on those convictions.

In short, in the course of the criminal proceedings that resulted in the convictions prompting revocation of his OSUP, Petitioner received all of the pre-deprivation procedural due process to which he was entitled.

**2. Any deviation from applicable regulations does not rise to the level of a procedural due process violation, and is subject to cure by additional process.**

INA regulations at 8 C.F.R. § 241.13(i)(3) require ICE to do two things when it revokes an alien's OSUP for violating conditions of release. First, “upon revocation,” ICE must notify the alien of the reasons for revocation. Second, “promptly after” the alien's return to custody, ICE must conduct an “informal interview. . . to afford the alien

an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* Petitioner alleges that ICE did not comply with the parts of its own regulations governing OSUP revocation,<sup>2</sup> and that as a result ICE violated procedural due process, the “*Accardi* doctrine,” and the Administrative Procedure Act, and that Petitioner must therefore be released. ECF No. 1 at 41-42.

This argument fails for multiple reasons. First, Petitioner has not shown that any deviation from the procedures set forth in 8 C.F.R. § 241.13(i)(3) is enough to amount to a due process violation, let alone enough to show that his detention is unlawful. Petitioner relies on *United States ex rel. Accardi v. Shaughnessy*, where the Supreme Court recognized an agency generally must follow its regulations. See 347 U.S. 260 (1954). But the Supreme Court in *Accardi* did not determine the sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that affects a party’s rights. Rather, as the Supreme Court later clarified, *Accardi* “enunciates[s] principles of federal administrative law rather than of constitutional law.” *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). “*Accardi* is based on administrative law principles, not constitutional due process requirements.” *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (quoting *Vanover v. Hantman*, 77 F.2d 91, 103 (D.D.C. 1935), *aff’d*, 38 F. App’x 4 (D.C. Cir. 2002)) (explaining limits

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<sup>2</sup> Petitioner cites to both 8 C.F.R. § 241.13(i)(3) and a similar provision at 8 C.F.R. § 241.4(l)(1)-(2). See, e.g., ECF No 1 at ¶¶ 75, 77. However, only 8 C.F.R. § 241.13 applies where, as here, ICE has determined that there is no significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(b)(1); 8 C.F.R. § 241.4(b)(4). The material difference between the two provisions is that 8 C.F.R. § 241.4(l)(2) requires that only certain officials have the authority to revoke OSUP. There is no such requirement under the applicable provision at 8 C.F.R. § 241.13(i)(3).

on the *Accardi* doctrine). Here, accordingly, Petitioner cannot show that his detention violates the Constitution merely by pointing the agency's noncompliance with a regulatory provision. And as explained above, he has not shown that his revocation violated due process.

Second, Petitioner has not shown prejudice, as he must to show a violation of due process in the immigration context. *Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) ("In order to prevail on his due process challenge, Petitioner must show he was prejudiced by the actions he claims violated his Fifth Amendment rights."). In particular, Petitioner does not challenge the validity of the convictions that resulted in his OSUP revocation, so there is no reason to believe that additional process would have resulted in a different outcome.

Third, the proper remedy for a failure to violate the regulations (and provide any related process) would be to cure that defect through additional process, not immediate release. A procedural due process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. Indeed, in *Accardi* itself, the Supreme Court did not order substantive relief (there, the suspension of deportation) but rather ordered the agency to afford the process provided in its regulations. See 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeals' failure to comply with its regulations, "he should receive a new hearing before the Board"). Thus, even under *Accardi*, Petitioner should at most be given exactly what the text of the regulation requires.

Consistent with this reasoning, several district courts have declined to grant

release to remedy procedural violations of immigration regulations. See, e.g., *Douglas v. Baker*, No. 25-cv-2243-ABA, 2025 WL 2687354, at \*5 (D. Md. Sept. 19, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at \*7-8 (D. Md. Aug. 27, 2025); *Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at \*11 (D. Md. Aug. 11, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025 WL 2062181, at \*6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at \*3 (D. Md. July 1, 2025); *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at \*9 (D. Mass. Oct. 1, 2018). The Court should do the same here.

**C. Petitioner's challenge to the possibility of his removal to a third country deportation does not show that his detention is unlawful, and it must be presented in the D.V.D. class action.**

In Count IV, Petitioner claims that Respondents have violated his procedural due process rights, the INA, the Foreign Affairs Reform and Restructuring Act of 1998, and implementing regulations by failing to give him meaningful notice and an opportunity to present a fear-based claim to an immigration judge before he is deported to a third country. ECF No. 1 at 57. Specifically, Petitioner challenges the application of DHS's Guidance Regarding Third Country Removals, issued in March 2025. See ECF No. 1 at ¶¶ 66, 106. This fails for several reasons.

First, this challenge to the destination of any removal is not cognizable in this habeas proceeding, because it is not a challenge to Petitioner's detention. A habeas proceeding is "at its core a remedy for unlawful executive detention" and cannot be used to bring other challenges. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020)

(quotation omitted). Petitioner's objection to any procedures used to determine a third country to which he might be removed is not a challenge to his detention.

Second, Petitioner's request for relief relating to third-country removal is encompassed in the claims presented in a certified class action pending in the District of Massachusetts, see *D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025), and Petitioner must proceed through that suit instead. The *D.V.D.* court certified a non-optout class, which includes:

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

*Id.* at 378, 394.<sup>3</sup> Accordingly, any challenge to the procedures used for third-country removal would need to be presented in that litigation, not this habeas case.

Third, to the extent that Petitioner asks this Court to address the fact that he has not yet been provided with notice of the third country or countries to which he may be removed and an opportunity to seek fear-based protection from such removal, any relief would be premature. In evaluating whether a matter is ripe, courts look to "whether the alleged harm[] has matured to a point at which it can be adjudicated," focusing on "whether there are uncertain or contingent future events that may not occur as anticipated, or may not occur at all." *Mallett v. Davis*, No. 10-cv-00085-MSK-MEH, 2010

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<sup>3</sup> While the Supreme Court has stayed the preliminary injunction issued in *D.V.D.*, see *DHS v. D.V.D.*, No. 24A1153 (S. Ct. June 23, 2025), the litigation remains ongoing with the non-optout class.

WL 5056201, at \*2 (D. Colo. Dec. 6, 2010) (citing *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1098 (10th Cir. 2006)) (analyzing ripeness in the context of a § 2241 habeas petition). Here, ICE is still in the process of pursuing avenues for Petitioner's removal, and his claim with respect to due process in relation to such removal is unripe. Ex. A ¶ 34.

**D. Petitioner's Rehabilitation Act claim is not cognizable in a habeas action, and he does not have a private right of action under Section 504 of the Act.**

In Count VI, Petitioner contends that Respondents have violated Section 504 of the Rehabilitation Act and the APA because they have not afforded him the reasonable accommodation of release from ICE detention. ECF No. 1 at 61. But Petitioner's Rehabilitation Act claim is not cognizable in a habeas action, and he does not have a private right of action under Section 504 of the Act. Moreover, he has not shown a violation of the Act that entitles him to release.

**1. Petitioner's Rehabilitation Act claim is not cognizable in a habeas action.**

A habeas proceeding is a challenge to the legality of the basis for detention, not a challenge to the conditions of confinement. In the Tenth Circuit, a challenge to the conditions of confinement must be brought in a civil action, not a habeas proceeding. *Palma-Salazar*, 677 F.3d 1031, 1035 (10th Cir. 2012). While Petitioner seeks his release as relief on his Rehabilitation Act claim, see ECF No. 1 ¶ 149, his claim challenges the conditions of his confinement—the medical and mental health care that he is receiving in ICE detention. See ECF No. 1 ¶¶ 140-41. Because his “medical conditions and treatment d[o] not impact the *duration* of [his] detention,” though, “the

Court cannot consider the Rehabilitation Act claim in [his] Petition” under 28 U.S.C. § 2241. *Viruel Arias v. Choate*, No. 22-cv-02238-CNS, 2022 WL 4467245, at \*4 (D. Colo. Sept. 26, 2022). Accordingly, Petitioner is not entitled to habeas relief on his Rehabilitation Act claim.

**2. Petitioner does not have a private right of action under Section 504 of the Act.**

In addition, Petitioner has not shown that Section 504 of the Rehabilitation Act entitles him relief. Section 504 does not create a private cause of action allowing individuals purportedly subject to disability discrimination by a federal agency to sue the agency in federal court. *See Bacote v. Fed. Bureau of Prisons*, No. 17-cv-03111-RM-NRN, 2021 WL 248808, at \*9 (D. Colo. Jan. 26, 2021), *appeal dismissed as moot*, 94 F.4th 1162, 1164 (10th Cir. 2024). Based on that reasoning, “[c]ourts have precluded federal detainees from bringing Rehabilitation Act claims against the federal agencies housing them.” *Acha v. Wolf*, No. 20-cv-1696, 2021 WL 537101, at \*7 (W.D. La. Jan. 28, 2021), *report and recommendation adopted*, No. 20-cv-1696, 2021 WL 536243 (W.D. La. Feb. 12, 2021). Thus, Petitioner’s Section 504 challenge fails.

**3. Petitioner also has not shown a violation of the Act that entitles him to release.**

Petitioner asserts the “[r]elease is the sole accommodation available to allow [him] to access his immigration-related proceedings.” ECF No. 1 at ¶ 149. He claims, for example, that his “slow cognitive processing speed impacts his ability to comprehend and respond to proceedings such as imminent deportation,” and that “recurrent disorientation and audiovisual hallucinations prevent his ability to work

meaningfully with counsel.” *Id.* ¶ 56.

But he provides no examples of any specific occasion on which he has been unable to access immigration-related services. In fact, with the assistance of counsel, Petitioner has been able to file a 63-page habeas petition, comprising an 11-page statement of facts and procedural history, and supported by Petitioner’s own 28-paragraph declaration. See ECF No. 1 at 8-19; ECF No. 1-2 at 59-63. He has also filed the 24-page Motion seeking preliminary relief. See ECF No. 3. These facts belie his conclusory assertion that his disabilities compel release under Section 504 of the Act.

**II. Petitioner has not met his burden to obtain preliminary injunctive relief.**

For the reasons already set forth above, Petitioner has not met his heavy burden to obtain preliminary injunctive relief.

A court may enter such emergency injunctive relief only after the moving party proves: “(1) that she’s substantially likely to succeed on the merits, (2) that she’ll suffer irreparable injury if the court denies the injunction, (3) that her threatened injury (without the injunction) outweighs the opposing party’s under the injunction, and (4) that the injunction isn’t adverse to the public interest.” *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (internal quotation marks omitted).

When a movant seeks a “disfavored injunction,” they must meet a heightened standard. *Id.* at 797. An injunction is disfavored when “(1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win.” *Id.* When seeking a disfavored preliminary injunction, the moving party must make a “strong showing” as to the likelihood-of-

success-on-the-merits and the balance-of-harms factors. *Id.*

Petitioner seeks a disfavored injunction. Petitioner requests that the Court order Respondents to immediately release him from detention—a request to change the status quo. Thus, Petitioner must make a strong showing on both the likelihood-of-success and balance-of-harms factors. He has not done so here.

**A. Petitioner is unlikely to succeed on the merits.**

For the reasons set forth above, Petitioner has not made a strong showing that he is likely to succeed on the merits of his claims.

**B. Petitioner has not shown irreparable harm.**

Petitioner argues that the fact of his current detention constitutes irreparable harm, citing generalized discussions from other courts about the effects of confinement and public reports about the conditions of ICE detention. ECF No. 3 at 6-7. But that cannot be enough. “To constitute irreparable harm, an injury must be certain, great, actual, and not theoretical.” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (internal quotation marks omitted). Here, Petitioner claims only that his “illnesses and injuries, combined with the poor conditions in detention, place him at *particularly high risk of irreparable harm*. ECF No. 3 at 8 (emphasis added). Moreover, if “detention in and of itself constitutes irreparable harm . . . then many if not most habeas petitioners would be entitled to such relief.” *Abshir H.A. v. Barr*, 19-cv-1033 (PAM/TNL), 2019 WL 3292058, at \*4 (D. Minn. May 6, 2019), report and recommendation adopted by *Abi v. Barr*, 2019 WL 2463036 (D. Minn. June 13, 2019). Petitioner has not said what about his particular situation is certain to result in

irreparable harm. That is insufficient to meet his burden.

**C. The balance of harms and public interest do not favor Petitioner.**

The third and fourth factors—regarding the balance of the equities and whether a preliminary injunction would be in the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has recognized that the public interest in the enforcement of the United States’ immigration laws is significant. *See, e.g., id.* at 436. Here, Respondents have a valid statutory and constitutional basis for detention, *see* 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 701, and he is being detained for “a period reasonably necessary to secure” his removal. *Zadvydas*, 533 U.S. at 699.

Petitioner cites several cases for the proposition that the government suffers no harm from having to comply with the law. ECF No. 3 at 21-22. But as explained above, Petitioner’s detention *is* lawful. And on the other side of the ledger, as the Supreme Court recently indicated, any time that the Government is “enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation omitted) (Roberts, C.J., in chambers). Enjoining Respondents from carrying out their statutory obligations would harm the Government and, thus, these factors weigh against the Court granting an injunction.

**CONCLUSION**

For the reasons set forth herein, the Petition and the Motion should be denied.

Respectfully submitted November 7, 2025.

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s/ Katherine A. Ross

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**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on November 7, 2025, the foregoing was served electronically on all CM/ECF participants.

s/ Katherine A. Ross  
United States Attorney's Office