UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

IRENE FLORES-MENDOZA,

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;

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-03475

PETITIONER-PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

A. Ms. Flores-Mendoza is at Imminent Risk of Removal

Petitioner-Plaintiff, Irene Flores Mendoza is in imminent danger of being removed from the United States within the next 24 hours or less. She files this Emergency Motion for Temporary Restraining Order ("TRO"), in addition to the pending Motion for TRO and/or Preliminary Injunction, ECF No. 5.

Undersigned counsel attempted to reach Ms. Flores Mendoza on November 3, 2025 at approximately 4:49 pm MT and was told she was unavailable. Later that day, Ms. Flores Mendoza sought to reach her counsel. At approximately 8:00 pm MT on the evening of November 3, 2025, she left a voicemail saying that she believed it was the intention of Immigration and Customs Enforcement ("ICE") to remove her to Mexico within the next 24 hours. That voicemail was not received until approximately 8:15 am MT on November 4, 2025. Once the information was relayed to undersigned counsel, counsel attempted to reach Ms. Flores Mendoza at the ICE Aurora Contract Detention Facility at 8:25 am MT on November 4, 2025. Counsel was informed by a guard working for GEO Group, Inc. that "Ms. Flores Mendoza is unavailable. I cannot say any more." When pressed to answer whether it was related to "count" – when people in the facility are counted each day impeding access to phones – the officer said, "I am not allowed to provide that information."

Undersigned counsel emailed opposing counsel at 8:28 am MT to request more information. He is attempting to gain more details regarding Ms. Flores Mendoza's whereabouts and is aware of Ms. Flores Mendoza's intention to file this Emergency Motion for TRO. Respondents-Defendants oppose this Motion.

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the All Writs Act, Ms. Flores Mendoza hereby seeks a temporary restraining order against Respondents-Defendants ("Respondents"). Ms. Flores Mendoza is in civil immigration detention and is at substantial risk of immediate, summary removal from the United States. Such removal would violate 8 U.S.C. § 1231(b)(3), the accompanying regulations, including 8 C.F.R. § 1208.31, and her rights under the Fifth Amendment Due Process Clause of the U.S. Constitution. ECF Nos. 1, 5.

B. Ms. Flores-Mendoza will Suffer Irreparable Harm Absent Injunctive Relief

Ms. Flores-Mendoza will suffer irreparable harm if her unlawful detention continues. The harm suffered is imminent and ongoing; it is "certain, great, and not theoretical." *Hiedman v. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). "Irreparable harm, as the name suggests, is harm that cannot be undone, such as by an award of compensatory damages or otherwise." *Salt Lake Tribune Publ'g Co., LLC v. AT&T Corp.*, 320 F.3d 1111, 1131 (10th Cir. 2003).

First, Respondents have already demonstrated that they can and will remove Ms. Flores-Mendoza from Aurora at any time without warning and attempt to deport her to a country where her freedom, and very life, is threatened. This risk of significant and irreparable harm is imminent and omnipresent.

Second, each day Ms. Flores-Mendoza remains detained in violation of her constitutional rights, she 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.

Ms. Flores-Mendoza 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). Ms. Flores-Mendoza is being denied the appropriate psycho-social environment needed to not only avoid further trauma but to heal from trauma she has endured both in and out of custody. *See* Exhs. N at 114-15,161; Exh. S at 202, Exh. T at 215.

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 a transgender woman living with HIV, Ms. Flores-Mendoza is particularly vulnerable to harm in detention.[2] Because of her gender identity and perceived sexual orientation, Ms. Flores-Mendoza has suffered abuse and harassment repeatedly from guards and other detained people. *See* Exhs. N at 161; S at 202. The only "solution" DHS has applied to address this is to force Ms. Flores-Mendoza to endure long periods of solitary confinement. *See id.*; *see also* Exh. O at 187. Both solitary confinement and the abuse and harassment cause further trauma and exacerbate her diagnosed conditions of post-traumatic stress disorder and depressive disorder. *See id.*; Exh. T at 214-16. Further, for at least a week this summer Ms. Flores-Mendoza was denied medication she takes regularly for treatment of HIV and hormone therapy, further

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

[2] *See* 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 (hereinafter "2024 CRCL Complaint"); 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.

jeopardizing her health.[3] *See* Exhs. S at 202; *see also* Exh. O at 187. Flores-Mendoza's vulnerability has grown exponentially since DHS's recent rescission of its policy protecting transgender women in detention by guaranteeing continued access to gender-affirming care, ensuring transgender women be housed and permitted to shower in areas matching their gender identities, and establishing committees to oversee treatment of trans people in detention.[4]

A TRO or preliminary injunction is necessary to prevent Ms. Flores-Mendoza from suffering such irreparable harm.

B. Ms. Flores-Mendoza is Likely to Succeed on the Merits of Her Claims

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

First, Ms. Flores-Mendoza is likely to succeed on her due process claim because her 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*, 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. Under substantive due process doctrine, a restraint on liberty like ongoing confinement 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).

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[3] 2024 CRCL Complaint at 10 (explaining that hormone treatment can affect kidney function and electrolyte values, which highlights the importance of non-interrupted treatment with consistent physician oversight).

[4] Seth Klamann, *ICE ends Aurora detention center's transgender care, protection policies,* THE FORT MORGAN TIMES (Sept. 16, 2025), *available at https://archive.ph/jsgXv.*

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," such as a decision to continue custody after a non-citizen is ordered removed. *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).

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, Ms. Flores-Mendoza's removal is not reasonably foreseeable, and she should therefore be released under *Zadvydas*. Her release may be conditioned "on any of the various forms of supervised release that are appropriate in the circumstances." *Id.* at 700. Ms. Flores-Mendoza cannot be deported to El Salvador because she was granted withholding of removal to that country. Seven months ago, ERO officers announced a plan to try to remove her to Mexico, Guatemala, or Panama. Since then, Ms. Flores-Mendoza has repeatedly asserted her fears that if she is removed to any of these countries she is more likely than not to be persecuted and tortured because she is transgender.

Under the statute, DHS is prohibited from removing Ms. Flores-Mendoza to Mexico, Guatemala, Panama, or any other country where she will face persecution or torture because of her gender identity or sexual orientation. *See* 8 U.S.C. § 1231(b)(3). Even if DHS could establish that it received diplomatic assurances that Ms. Flores-Mendoza would not be tortured or persecuted in one of the aspirational countries it identified for removal, she is nevertheless due additional process before such removal could be effectuated. *Id.*; *Santamaria Orellana v. Baker, et al.*, No. CV 25-1788-TDC, 2025 WL 2841886, at *10 (D. Md. Oct. 7, 2025) (recognizing the procedure EOIR must afford *after* the Asylum Office denies a fear-based claim, as set forth in 8 C.F.R. § 1208.31(g) and failure to comply "is a due process violation under the *Accardi* doctrine."). Thus, Ms. Flores-Mendoza's removal is not reasonably foreseeable because she cannot be deported to her country of citizenship, has no ties to other countries, and has strong grounds to challenge removal to any third country

2. Violation of Procedural Due Process

Ms. Flores-Mendoza's detention is also unlawful because it violates procedural due process. There are two key aspects of this claim. First, Ms. Flores-Mendoza's ongoing post custody detention without proper notice and review 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*, 424 U.S. at 333, 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. All three

Matthews factors weigh in favor of a finding that Respondents have failed to provide Ms. Flores-Mendoza with the due process required under the Fifth Amendment.

a. Ongoing detention without due process

Respondent's decision to continue to hold Ms. Flores-Mendoza in custody after the mandatory detention period without providing her meaningful notice or opportunity to challenge such decision violates procedural due process.

The first factor, the private interest at issue, favors Ms. Flores-Mendoza. "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. at 690.

The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Ms. Flores-Mendoza. To protect against erroneous deprivations of liberty, DHS regulation requires that it conduct post-order custody reviews 90 days and 180 days after a noncitizen's removal order becomes final. 8 C.F.R. § 241.4 (k)(1)(i); (k)(2)(ii). If DHS decides to retain custody after these reviews, it must provide the noncitizen with a written decision setting forth the reasons for this determination. *Id.* at § 241.4 (d). Here, the 90-day review decision provided only a conclusory statement claiming that Ms. Flores-Mendoza failed to establish that "if released you will not pose a significant flight risk." Exh. Q at 192. DHS stated this decision was based on her removal order without any individualized analysis. *Id.* The decision contains no other reasoning and there is no indication that DHS even contemplated the likelihood of Ms. Flores-Mendoza's removal in the foreseeable future. Nor has any further explanation been forthcoming.

Respondents cannot justify Ms. Flores-Mendoza's continued confinement, and it is unlawful. Although Ms. Flores-Mendoza has been detained for over seven months in the post-order period, she has yet to receive any decision regarding her 180-day custody review. Because she has been denied any meaningful notice as to the individualized reasons for her ongoing detention, Ms. Flores-Mendoza has been deprived of the opportunity to challenge it. By failing to follow their own regulations to provide even minimal due process to Ms. Flores-Mendoza, the risk of erroneous deprivation of her liberty is not just high, but certain.

The third factor, the government's interest, also favors Ms. Flores-Mendoza. When the government ignores law that ensures due process reviews to justify continued custody, it is more likely to waste limited financial and administrative resources on unnecessary prolonged detention. This waste drags down the efficiency of the entire immigration system.

b. Removal to a third country without the opportunity to present a fear-based claim

The Supreme Court recently explained that even noncitizens who were members of a designated terrorist organization were entitled to certain due process protections prior to deportation, and "notice roughly 24 hours before removal, devoid of information on how to exercise due process rights to contest that removal, surely does not pass muster." *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025). Unlike the petitioners in that case, Ms. Flores-Mendoza is not alleged to be a national security threat or danger to the community; nonetheless Respondents attempted to deport her with significantly less process than the 24 hours' notice the Court found inadequate.

Consequently, 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, Ms. Flores-Mendoza must also be given these same protections.

The Fourth Circuit has 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). 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 Ms. Flores-Mendoza's favor. *See Mathews*, 424 U.S. at 335. First, Ms. Flores-Mendoza has a private interest at stake: her right to have her removal withheld from a country where she is more likely than not to be tortured. To date, Ms. Flores-Mendoza has not been provided with any meaningful opportunity to present a fear-based claim to protect against her removal to a third country, yet she remains detained, presumably on this basis. In other words, Ms. Flores-Mendoza's detention and the question of its legality merge with her right to have her removal deferred from a country where it is likely she will face torture. As such, she seeks to raise a claim for withholding of removal and 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, Ms. Flores-Mendoza's private interest weighs heavily in favor of a robust due process requirement.

Second, there is a high risk of Respondents' erroneous deprivation of Ms. Flores-Mendoza's rights. Such a deprivation almost occurred already when Respondents abruptly tried to deport her to Mexico—directly violating a stay of removal from the immigration court, the preliminary injunction then in effect from *D.V.D.*, 2025 WL 1142968, at *46-47 and 8 U.S.C. § 1231(b)(3). Prior to this unlawful attempt to remove her, Ms. Flores-Mendoza had already made exhaustive efforts to alert DHS of her credible fears of persecution and torture in that country. *See* Exhs. C, E, G, H, J.

Pursuant to the United States's obligations under international treaties, when a noncitizen expresses a fear of removal to a designated country DHS must provide them the opportunity to demonstrate a reasonable fear of torture and/or persecution to an asylum officer. 8. U.S.C. 1231(b)(3); 8 C.F.R. §§ 208.31, 1208.31; *see, e.g., 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).

Because Ms. Flores-Mendoza has not received *any* of this required process, 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 Ms. Flores-Mendoza requests would create a minimal delay in that process, and she will likely demonstrate she is at risk of harm in any intended country of removal given the risk factors she displays based on her identity as a transgender woman. Thus, pursuant to *Mathews*, due process requires the procedural protections Ms. Flores-Mendoza 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"). Further, the APA authorizes a court to "compel agency action unlawfully withheld or delayed." *Id.* at § 706. Judicial review is authorized for final agency actions. *Id.* at § 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, Ms. Flores-Mendoza challenges two final agency actions that violate the APA: (1) ICE's 90-day custody review decision denying her release and the ongoing failure to issue her a decision for her 180-day review; and (2) ICE's third country removal policy. Both actions are arbitrary, capricious, and contrary to law.

a. ICE's 90-Day Detention Determination was arbitrary, capricious, and contrary to law

Respondents have violated the APA by ignoring their own regulations and failing to provide any meaningful notice to Ms. Flores-Mendoza as to the reasons for her continued detention.

Agency regulations delineate circumstances when noncitizens may be detained beyond the removal period and the due process they must be provided through periodic custody reviews. 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*, 2025 WL 2444087, at *6 (discussing § 241.4 generally) (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.

To continue detention beyond the 90-day removal period, DHS regulations require ICE to conduct a post-order custody review (POCR) before 90 days or "as soon as possible thereafter." 8 C.F.R. § 241.4 (k)(1)(i)-(iv). "A decision to retain custody shall briefly set forth the reasons for the continued custody." 8 C.F.R. § 241.4 (d).

However, here the agency's stated reasoning in the 90-day decision to continue Ms. Flores-Mendoza's custody is not just brief—but boilerplate and conclusory. The decision states: "ICE has determined to maintain your custody because: you have not demonstrated that, if

released, you will not: [p]ose a significant risk of flight pending your removal from the United States. ICE has made such a determination based upon your removal order." Exh. Q at 192. The decision contains no other explanation and there is no indication that Respondents even contemplated the likelihood of Ms. Flores-Mendoza's removal in the foreseeable future.

Further, although over seven months have passed since her removal order became final, Respondents have yet to issue any decision regarding her 180-day custody review. DHS is required to conduct a custody review before or at 180 days of post-removal order detention. 8 C.F.R. § 241.4(k)(2)(ii). As with the 90-day review, the agency must issue a "written recommendation [that] shall include a brief statement of the factors that the review panel deems material to its recommendation." *Id.* at (i)(5).

By failing to provide any individualized reasons to justify Ms. Flores-Mendoza's ongoing detention, Respondents have deprived her of the means to challenge it, thus violating her due process rights. "The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Matthews*, 424 U.S. at 348 (cleaned up).

By failing to provide any meaningful notice justifying Ms. Flores-Mendoza's ongoing detention, DHS has violated the statute, applicable regulations, and the constitutional principles underlying them. Such agency action should be set aside as contrary to law and as arbitrary or capricious.

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*, 24 F.4th at 977 (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*, 2025 WL 2444087, at *8 ("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).

C. The Balance of Equities and Public Interest Weigh Heavily in Ms. Flores-Mendoza's Favor

The balance of hardships and the public interest both tip strongly in Ms. Flores-Mendoza'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 *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 Ms. Flores-Mendoza in violation of law.

Further, any burden imposed by requiring DHS to refrain from detaining and deporting Ms. Flores-Mendoza is both *de minimis* and clearly outweighed by the substantial harm she will suffer as if she 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 Ms. Flores-Mendoza to be immediately released.

D. In the Alternative, Ms. Flores Mendoza Requests that Respondents be Enjoined from Transferring Her Out of This District While the Case is Pending.

If the Court does not order Ms. Flores-Mendoza immediately released, she respectfully requests that, at a minimum, this Court enjoin Respondents from transferring her outside the District of Colorado—including her removal from the United States—during the pendency of her underlying habeas case.

In the past five months Respondents have twice abruptly transferred Ms. Flores-Mendoza out of the Aurora facility. *See* Exhs. J, S, N. These transfers occurred despite Respondents being on notice that Ms. Flores-Mendoza's counsel is in Denver, and that she has special vulnerabilities as a transgender woman living with HIV which means she cannot be afforded the necessary level of protection or medical care in other facilities. Of greatest concern, as discussed

supra, is that on June 3, 2025, Respondent's ignored orders from both the immigration court and a Federal District court and attempted to remove her to Mexico. *See* Exh. S at 201-02. Moreover, in a recent case in this district, Respondents transferred another noncitizen from the Aurora Facility 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 Ms. Flores-Mendoza's significant constitutional and statutory claims, and preserve judicial resources by avoiding the necessity of refiling this case elsewhere, Ms. Flores-Mendoza respectfully asks this Court to enjoin her transfer outside this district during the pendency of this case.

Further, as deportation flights usually take place on Tuesday mornings, and given that Respondents attempted to unlawfully deport Ms. Flores-Mendoza on June 3, 2025, one day *after* an IJ granted her a stay of removal, Petitioner respectfully requests the Court enter an order enjoining her removal before next Tuesday, November, 4, 2025.

CONCLUSION

For all the above reasons, this Court should find that Ms. Flores-Mendoza warrants an Emergency TRO enjoining Respondents from transferring her from the District of Colorado and removing her from the United States. If Respondents have already transferred Ms. Flores-Mendoza outside of the District of Colorado this Court should order her immediate return.

Dated: November 4, 2025

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CERTIFICATE OF SERVICE

I, Laura Lunn, hereby certify that on November 4, 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:

Benjamin.Gibson@usdoj.gov

/s/ Laura Lunn