IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03475-RMR

I.F.M.,

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, *et al.*,

Respondents-Defendants.

PETITIONER'S EMERGENCY MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION AND MOTION FOR ORDER TO SHOW CAUSE WHY RESPONDENTS SHOULD NOT BE HELD IN CONTEMPT

Petitioner-Plaintiff, I.F.M., through counsel, hereby requests that pursuant to Fed. R. Civ. P. 65(b)(1) and this Court's authority under the habeas statute, 28 U.S.C. § 2241, and All Writs Act, 28 U.S.C. § 1651(a), this Court issue an emergency temporary restraining order, restraining Respondents-Defendants ("Respondents") from removing her from the United States and issue an order granting her immediate release.

In support of this motion, I.F.M. respectfully represents the following:

Procedural History

1. I.F.M. is a transgender woman from El Salvador. On February 26, 2025, an immigration judge entered a final order of removal against her and simultaneously ordered that it be

withheld based in a finding that it "more likely than not" that I.F.M. will face persecution in El Salvador based on [redacted] ECF No. 1 at ¶ 2.

2. Neither party appealed, and the order became final on March 28, 2025. *Id.*

3. Subsequently, Respondents-Defendants informed I.F.M. that they were seeking to remove her to Mexico, Guatemala, or Panama. Ms. Flores-Mendoza repeatedly asserted her fear of being tortured and persecuted [redacted] ECF No. 1 at ¶ 7.

4. On May 30, 2025, she asked Respondents to join in her motion seeking to challenge this third country removal in immigration court. *Id.*

5. On June 4, 2025, Respondents attempted to unlawfully remove I.F.M. to Mexico. *Id.*

6. On October 31, 2025, I.F.M. filed a Petition for Writ of Habeas Corpus before this Court, challenging her indefinite detention, alleging that it violated 8 U.S.C. § 1231 and Fifth Amendment Due Process. ECF No. 1 at 44-45. She also challenged Respondents-Defendants' failure to provide adequate notice and a meaningful opportunity to present a fear-based claim, in violation of her Fifth Amendment right to due process and the Administrative Procedure Act 5 U.S.C. § 706(2). ECF No. 1 at 45-46. She again articulated a fear of removal to a third country.

7. On October 31, 2025, I.F.M. filed a Motion for Temporary Restraining Order ("TRO") and/or Preliminary Injunction requesting that the Court order I.F.M.'s release, or in the alternative, enjoin "Respondents from transferring her from the District of Colorado." ECF No. 5 at 25.

8. Despite the pending Motion, ECF No. 5, on November 4, 2025, Respondents initiated I.F.M.'s removal to Mexico, without prior notice or an opportunity to be heard. ECF No. 12.
9. That same day, Respondents repeatedly denied I.F.M.'s requests to speak to counsel and conversely, counsel's requests to speak to I.F.M. *Id.* at 2.
10. On November 4, 2025, I.F.M., through counsel, filed an Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction seeking an order preventing her removal from the District of Colorado or the United States. ECF No. 12.
11. On November 4, 2025, this Court issued an Order, stating that "Respondents SHALL NOT REMOVE Petitioner from the District of Colorado or the United States unless or until this Court or the Court of Appeals for the Tenth Circuit vacates this Order." ECF No. 14.
12. On November 10, 2025, Respondents provided a Response to I.F.M.'s Petition, ECF No. 1. ECF No. 19. Attached to that Response was a declaration from Mark Kinsey, a deportation officer for Immigration and Customs Enforcement ("ICE") that stated the following:
    a. "On March 29, 2025, ICE requested acceptance of Petitioner from Panama, Guatemala, and Mexico." ECF No. 19-1 at ¶ 22.
    b. "On June 1, 2025, ICE submitted requests for acceptance to Costa Rica, Nicaragua, and Honduras." ECF No. 19-1 at ¶ 25. "Between June 2, 2025 and June 3, 2025, ICE received rejections from Honduras and Costa Rica." *Id.* at ¶ 26.

c. "On July 2, 2025, ICE submitted requests for acceptance to Colombia, Belize, and Panama." *Id.* at ¶ 30. "On July 4, 2025, ICE received a rejection from Panama." *Id.* at ¶ 31.

d. "On November 3, 2025, ICE served Petitioner with a Notice of Removal to Mexico." *Id.* at ¶ 36.

e. On November 4, 2025, after I.F.M. filed an Emergency Motion for TRO, "ICE cancelled Petitioner's scheduled removal to Mexico." *Id.* at ¶ 38.

13. On November 17, 2025, I.F.M. filed a reply to Respondents' Response. ECF No. 22.

14. On November 24, 2025, this Court entered an Order, ECF No. 23, finding that "Respondents have not provided the concrete evidence necessary to rebut I.F.M.'s reasoning that there is no significant likelihood of removal in the reasonably foreseeable future," and granting her release. ECF No. 23 at 10.

15. On November 26, 2025, pursuant to this Court's order, ICE released I.F.M. from detention.

16. On March 6, 2026, this Court entered a Final Judgment and "ORDERED that the Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [ECF No. 1] is GRANTED." ECF No. 28.

Subsequent Factual Developments

17. After release from the Aurora Contract Detention Facility ("Aurora facility"), I.F.M. resided at Casa Marianella in Austin, Texas. ECF No. 29-1, Declaration of Shira Hereld.

18. I.F.M.'s belongings were stollen and she sought the assistance of local police. *Id.* at

¶¶ 4-5.

19. Police arrested I.F.M. and called ICE. ECF No. 29-1.

20. Based on information and belief, ICE redetained I.F.M. on March 4, 2026. *Id.* at ¶ 5.

21. On March 16, 2026, I.F.M. called Attorney Hereld from a detention facility located in Pearsall, Texas, notifying them of her current detention status. *Id.* at ¶ 3.

22. I.F.M. reports that she is detained in a dorm of cis men and is experiencing discriminatory treatment, sexual harassment, and other harm. *Id.* at ¶ 6.

23. ICE indicated to I.F.M. that it is seeking to remove her to Honduras or Costa Rica. *Id.* at ¶ 7. She fears persecution and torture in both countries and in any third county to which DHS seeks her removal. *Id.*

24. Attorney/client communication is impeded by I.F.M.'s current detention. ECF No. 29-1 at ¶ 8.

25. I.F.M. lacks the resources to pay a TRO bond. *Id.* at ¶ 15.

26. On March 17, 2026, undersigned counsel provided notice to opposing counsel for Respondents of this Motion and sought their position. ECF No. 29-1, Hereld Decl. Counsel for Respondents indicated that he has informed ICE of this motion and Respondents oppose. ¶¶ 12-13.

27. This Motion and an Emergency Motion to Enforce follow.

LEGAL STANDARD

A. Preliminary Injunction 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 purpose of a temporary restraining order ("TRO") is to 'preserv[e] the status quo and prevent[ ] irreparable harm just so long as is necessary to hold a [preliminary injunction] hearing, and no longer.' *Engility Corp. v. Daniels*, No. 16-CV-2473-WJM, 2016 WL 8358509, at *1 (D. Colo. Oct. 25, 2016) (quoting *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974)).

The procedure and standards for determining whether to issue a TRO mirror those for a preliminary injunction. *See Emmis Commc'ns Corp. v. Media Strategies, Inc.*, 2001 WL 111229 at *2 (D. Colo. Jan. 23, 2001) (citation omitted). A party seeking a TRO and preliminary injunction must show: (1) they are "likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary relief," and (3) "that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). The third and fourth factors "merge" where, like here, the government is the opposing party. *Nken v. Holder,* 556 U.S. 418, 435 (2009). 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). The second most critical factor is the likelihood of success on the merits. *Rocky Mountain Gun Owners v. Polis,* 121 F.4th 96, 112 (10th Cir. 2024).

The Court also has independent authority under the habeas corpus statute, 28 U.S.C. § 2241, to order the immediate release of detained persons from unconstitutional confinement. *See, e.g., Boutwell v. Keating,* 399 F.3d 1203, 1208-09 (10th Cir. 2005) (when an imprisoned person "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release ... his sole federal remedy is a writ of habeas corpus") (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)).

The same is true under the All Writs Act, 28 U.S.C. § 1651(a). ECF No. 14; *Vizguerra-Ramirez v. Choate, et al.*, Case No. 1:25-cv-881, D. Colo., ECF No. 11 at 45 (collecting cases); *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603 (1966); *Local 1814, Int'l Longshoremen's Ass'n v. New York Shipping Assn*, 965 F.2d 1224, 1237 (2d Cir. 1992)).

B. Ex Parte Temporary Restraining Orders

Pursuant to Federal Rule of Civil Procedure 65(b)(1) a TRO may be issued without notice to adverse parties "only if": (1) "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition," and (2) "the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b)(1).

Courts in this district have previously found that they have authority under the All Writs Act, 28 U.S.C. s 1651(a) and Fed. R. Civ. P. 65(b) to enter ex parte orders enjoining removal of petitioners bringing habeas claims under § 2241. ECF No. 14; *see, e.g., Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2051751, *1-2 (D. Colo. July 21, 2025); *Batooie v. Ceja*, No. 25-CV-02059-DDD-STV, 2025 WL 1836695 *1-2 (D. Colo. July 3, 2025)

(entering emergency ex parte TRO to enjoin removal of petitioner to country he had been granted withholding from because "deportation without process could work irreparable harm and an order must issue without notice due to the urgency."); *Dvortsin v. Noem*, No. 25-CV-01741-NYW, 2025 WL 1751968, *2-3 (D. Colo. June 12, 2025) (granting emergency ex parte TRO to prevent government from carrying out threatened expedited deportation of noncitizens who could not legally be placed in expedited proceedings).

ARGUMENT

Respondents have violated this Court's Orders, ECF Nos. 23, 28, requiring them to release Petitioner. The Court should immediately order release pursuant to Fed. R. Civ. P. 65(b)(1) and this Court's authority under the All Writs Act, 28 U.S.C. § 1651(a). Further, Respondents should be ordered to show cause why they should not be held in contempt. Fed. R. Civ. P. 70(e); 18 U.S.C. § 401(3).

I. This Court Should Grant Injunctive Relief

I.F.M. meets the standard for ex parte injunctive relief.

Irreparable Harm. I.F.M. is unconstitutionally detained and—yet again—she faces the risk of unlawful removal to a third country. The harm suffered is imminent and ongoing; it is "certain, great, actual and not theoretical." *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). "Irreparable harm, as the name suggests, is harm that cannot be undone, such as by an award of compensatory damages or otherwise." *Salt Lake Tribune Publ'g Co., LLC v. AT&T Corp.*, 320 F.3d 1081, 1105 (10th Cir. 2003). Here, I.F.M. prevails on the most important factor in assessing whether injunctive relief is warranted.

I.F.M.'s indefinite detention is unconstitutional. ECF No. 23. The due process violation alone with no further showing of injury, is sufficient to meet this standard for injunctive relief. *Free the Nipple— Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019) (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012)).

Further, 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. . .The time spent in jail is simply dead time." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972). In this instance, I.F.M. faces irreparable physical and mental harm due to her unlawful detention. This is particularly true given that she is currently being detained in a dorm of cis men and is experiencing discriminatory treatment, sexual harassment, and other serious harms.

Moreover, I.F.M. fears persecution and torture should she be unlawfully deported to a third country, which would constitute harm sufficient to justify relief.

Likelihood of Success on the Merits. I.F.M. already prevailed on the merits. ECF No. 23. This factor overwhelmingly weighs in her favor.

Even if Respondents present new evidence pertinent to the question of whether I.F.M.'s removal can be effectuated in the reasonably foreseeable future, the record in this case demonstrates it is unlikely that Respondents will meet their burden of proof. *See* ECF Nos. 19, 23.

Courts nationwide have likewise held that ICE's practice of effectuating third-country removals without meaningful notice or an opportunity to be heard is unlawful and have granted the same relief sought in I.F.M.'s petition. *See, e.g.*, *Emara v. Bondi*, No. 26-cv-00116-KKE, 2026 WL 266067, at *5 (W.D. Wash. Feb. 2, 2026); *Hernandez v. Bondi*, No.

1:25-cv-02020-EPG-HC, 2026 WL 350829, at *8 (E.D. Cal. Feb. 9, 2026); *Al Zoubani v. Noem*, No. 26-cv-00378-BJC-KSC, 2026 WL 524053, at *3 (S.D. Cal. Feb. 25, 2026).

The conclusion is reinforced by M.A.'s undisputed status as a class member in *D.V.D. v. Department of Homeland Security*, No. 25-cv-10676-BEM, pending in the United States District Court for the District of Massachusetts. -- F. Supp. 3d. --, 2026 WL 521557 (D. Mass Feb. 25, 2026). On February 25, 2026, Judge Brian E. Murphy ruled, in part, as follows:

> 3. The Court DECLARES that class members have the right to meaningful notice before removal to any third country.
>
> 4. The Court DECLARES that class members have the right to a meaningful opportunity to raise a country-specific claim against removal before removal to any third country.
>
> 5. The Court DECLARES that Defendants' third-country removal policy, as embodied in DHS's March 30, 2025 memorandum, titled "Guidance Regarding Third Country Removals," and ICE's July 9, 2025 memorandum, titled "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)," is unlawful and SETS ASIDE that policy.

On March 16, 2026, the First Circuit granted the government's stay motion. *D.V.D. v. Department of Homeland Security*, No. 26-1212, Order, Doc. 00118417272 (1st Cir. 2026). The court also issued an expedited briefing schedule, requiring the completion of merits briefing on or before April 20, 2026. *Id.*

Separately, I.F.M.'s as-applied challenge to Respondents' application of the third country removal policy to her was fully briefed in the underlying proceedings. ECF Nos. 1, 19, 22. Meanwhile, "many district courts" have found that ICE's "policy of deporting individuals to third countries without providing an opportunity to be heard and present fear-based claims is

unlawful." *Koca v. Noem*, No. 26-CV-00443-NYW, 2026 WL 575661, at *3 (D. Colo. Mar. 2, 2026) (collecting cases).

Balance of Equities and the Public Interest. Respondents cannot provide a lawful justification for I.F.M.'s detention. "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." *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 943 (D. Colo. 2025) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)). Further, any burden imposed by requiring DHS to refrain from detaining and deporting I.F.M. is de minimis and clearly outweighed by the substantial harm she will suffer if she continues to be detained or is unlawfully 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.").

Here, the administrative burden on Respondents is limited. All they must do is release I.F.M., as previously achieved within two days after this Court ordered them to do so. Further, keeping I.F.M. safe from discriminatory treatment and harm in detention serves the public interest. *See Arostegui-Maldonado*, 794 F. Supp. 3d at 943.

Ex Parte Relief is Warranted. I.F.M. meets the standard set forth in Fed. R. Civ. P. 65(b)(1). First, she provided "specific facts" in her Verified Petition, ECF No. 1, and the attached affidavit provided by Attorney Shira Hereld. ECF No. 29-1. She demonstrates that "immediate and irreparable injury, loss, or damage will result" "before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1). Second, undersigned counsel made efforts to give notice to counsel for Respondents. On March 17, 2026, counsel emailed Attorney Benjamin Gibson,

informing him of I.F.M.'s intention to file this Motion and the accompanying Emergency Motion to Enforce. Respondents oppose both motions. Given I.F.M. meets the requirements for ex parte intervention, this Court should immediately grant the relief sought.

II. Respondents Should Show Cause Explaining Why They Should Not be Held in Contempt

I.F.M. respectfully requests that this Court order Respondents to show cause to demonstrate why they are knowingly in violation of this Court's Orders, ECF Nos. 23, 28. Failure to satisfy this Court should result in a contempt finding. Fed. R. Civ. P. 70(e); 18 U.S.C. § 401(3).

CONCLUSION

The Court should order Respondents to immediately release I.F.M. Further, the Court should clarify that Respondent cannot redetain I.F.M. absent a constitutionally adequate pre-deprivation bond hearing. Finally, Respondents should be ordered to show cause why they should not be held in contempt.

Dated: March 17, 2026

Respectfully submitted,

/s/ Laura P. Lunn
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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system pursuant to Fed. R. Civ. P. 5., which will send notification of such filing to the following recipients by email:

Benjamin.Gibson@usdoj.gov

/s/ Laura Lunn
Attorney for Petitioner

CERTIFICATE OF CONFERRAL

I confirm that I have conferred with the opposing counsel in good faith regarding this motion, as required under local rule D.C.COLO.LCivR 7.1(a).

Dated: March 17, 2026

/s/ Laura Lunn
Attorney for Petitioner