

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

MANISH KUMAR,

Petitioner,

v.

JUAN BALTAZAR, et al.,

Respondents.

Case No. 26-cv-254-RMR

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

PRELIMINARY STATEMENT¹

Petitioner's Petition for Writ of Habeas Corpus has been fully briefed since February 2, 2026, and is ripe for decision. If the Court rules on the Petition (Dkt. 1), this Motion would become moot.

INTRODUCTION

Petitioner Manish Kumar moves for a temporary restraining order and preliminary injunctive relief pursuant to Fed. R. Civ. P. 65 against Respondents, requiring them to release him from custody immediately, or in the alternative, to promptly hold a bond hearing.

Mr. Kumar fled political religious persecution in India and came to the United States as a refugee in 2023. When he arrived, Respondents determined he was not a danger or a flight risk and released him on his own recognizance. Since then, he has lived in this country for more than two years, working lawfully pursuant to an employment authorization document, and has built a

¹ Counsel for Mr. Kumar attempted to confer via email and phone with counsel for Respondents without success before filing, but believes the Court may consider this motion opposed.

life for himself. Nearly two months ago, he was detained in violation of the INA and the Due Process Clause while driving his truck, and he remains in custody without bond.

Because of Mr. Kumar's unlawful detention, his immigration case was put on a vastly accelerated docket, requiring him to litigate his asylum case from a Colorado jail cell, putting him at a substantial disadvantage compared with noncitizens who are at liberty and on a standard docket, who have a greater ability to prepare with their counsel. His case is currently set for a master hearing on February 27, 2026, at which point the immigration court will likely schedule his final hearing in the very near future; however, if this Court orders his release before that time, he would move to a standard, non-detained docket that would allow him a fuller chance to present his claims for relief from removal. Additionally, as set forth below, he is suffering ongoing, irreparable harm in the form of detention under abhorrent conditions without due process of law.

Courts in this district – including every jurist in the District of Colorado to consider the question – have repeatedly held that detention of individuals like Mr. Kumar without bond is unlawful. For the reasons that follow, the Court should grant emergency injunctive relief and require his release from custody.

FACTUAL BACKGROUND

Respondents' Response (Dkt. 9) does not dispute any of the facts alleged in the Petition (Dkt. 1). Mr. Kumar is a 25-year-old national of India who came to the United States on or around September 6, 2023. Dkt. 1 at ¶¶ 23-24. He has been placed in removal proceedings under 8 U.S.C. § 1229a and is charged with being "an alien present in the United States who has not been admitted or paroled." *Id.* at ¶ 24. Shortly after his arrival, he was apprehended and released on his own recognizance because he was neither a danger nor a flight risk. *Id.* at ¶ 25. He has no criminal

record and has complied with all the terms of his release order. *Id.* at ¶ 1. On or around December 30, 2025, Mr. Kumar was arrested while driving his truck when he had parked it on the shoulder in a no-parking area. *Id.* at ¶ 26. He was transferred to immigration custody and eventually moved to the Denver Contract Detention Facility in Aurora, CO, where he remains in custody without bond. *Id.* at ¶ 26. He is represented by counsel in his removal proceedings and is eligible, and has applied, for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at ¶ 29.

LEGAL STANDARD

Rule 65 requires a movant for a temporary restraining order to show that: (i) they will suffer irreparable harm unless the injunction is issued; (ii) they have a substantial likelihood of prevailing on the merits; (iii) the threatened injury outweighs any harm that the preliminary injunction may cause the opposing party; and (iv) the injunction will not adversely affect the public interest. *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016).

Where an injunction alters the status quo, movants must “make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms.” *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 237 F. Supp. 3d 1126, 1130 (D. Colo. 2017), *aff'd*, 916 F.3d 792 (10th Cir. 2019) (quotation omitted); *see Essien v. Barr*, 457 F. Supp. 3d 1008, 1012–13 (D. Colo. 2020) (dismissing the “mandatory versus prohibitory” distinction and agreeing that a “strong showing” must be made for a detained immigrant to win a preliminary injunction). Courts cannot require that the factors weigh “heavily and compellingly” in a movant’s favor; the Tenth Circuit “jettisoned the heavily-and-compellingly requirement over a decade ago.”

Free the Nipple-Fort Collins, 916 F.3d at 797 (citations and brackets omitted). Instead, a movant in this posture must merely make a “strong showing.” *Id.*

The Court likewise has independent authority under habeas corpus, 28 U.S.C. § 2241, to order the immediate release of detained persons from unconstitutional confinement.

ARGUMENT

I. Mr. Kumar has demonstrated a likelihood of success on the merits.

When assessing this prong of the test, the appropriate standard is a “reasonable likelihood” of success and nothing more. *Diné Citizens Against Ruining Our Env’t*, 839 F.3d at 1282; e.g. *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc) (internal quotation marks omitted) (“[L]ikelihood of success on the merits” means that a plaintiff has “a reasonable chance, or probability, of winning . . . A likelihood does not mean more likely than not.”).

Here, Mr. Kumar has a likelihood of success on the merits, since every court in this district to consider this issue has found that his detention without bond under § 1225(b)(2) is unlawful. *See, e.g., Garcia Abanil v. Baltazar*, 25-cv-4029, 2026 WL 100587 (D. Colo. Jan. 14, 2026) (Martinez, J.); *Garcia-Perez v. Guadian*, 25-cv-4069, 2026 WL 89613 (D. Colo. Jan. 13, 2026) (Brimmer, C.J.); *Trejo Trejo v. Baltazar*, 25-cv-4026, 2026 WL 63431 (D. Colo. Jan. 8, 2026) (Crews, J.); *Briales-Zuniga v. Baltazar*, 25-cv-3439, 2026 WL 35227 (D. Colo. Jan. 6, 2026) (Wang, J.); *Jimenez Reyes v. Olson*, 2:25-cv-622-JRS-MG, 2025 WL 3765963 (S.D. Ind. Dec. 30, 2025); *Rico v. Baltazar*, 25-cv-3943, 2025 WL 3640366 (D. Colo. Dec. 16, 2025) (Sweeney, J.); *Facio v. Baltazar*, 25-cv-3592, 2025 WL 3559128 (D. Colo. Dec. 12, 2025) (Chung, J.); *Gutierrez*

v. Baltasar, 25-cv-2720, 2025 WL 3251143 (D. Colo. Nov. 21, 2025) (Rodriguez, J.); *Batz Barreno v. Baltasar*, 25-cv-3017, 2025 WL 3190936 (D. Colo. Nov. 14, 2025) (Gallagher, J.).

In fact, just recently, one court in this district decided a case legally identical to this one, finding that immediate release is the appropriate remedy when an individual was previously released on an order of release on recognizance and that release was not validly revoked. *Singh v. Baltasar*, 1:25-cv-00336-CNS, -- F. Supp. 3d --, 2026 WL 352870 (D. Colo. Feb. 9, 2026) (Sweeney, J.).

II. Mr. Kumar stands to suffer irreparable harm absent relief from this Court.

Mr. Kumar suffers irreparable harm each day he remains detained without due process of law. The harm suffered is imminent and ongoing; it is “certain, great, and not theoretical.” *Heidman v. S. 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).

The violation of an individual’s constitutional rights is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976). Indeed, “[m]ost courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.” *Free the Nipple-Fort Collins*, 916 F.3d at 805–06 (citing *Awad v. Ziriox*, 670 F.3d 1111, 1131 (10th Cir. 2012)); *Conn. Dept. of Env’l Prot. v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) (“[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury.”) (internal quotations and citations omitted)).

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court explained, “[t]he time spent in jail awaiting trial 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); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (“[t]he deprivation [] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others outside normal visiting hours. The use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone”); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing in “concrete terms the irreparable harms imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on [persons in detention] and their families as a result of detention, and the collateral harms to children of [persons in detention] whose parents are detained”).

Underscoring this harm, the government itself documented alarmingly poor conditions in ICE detention centers.² Nevertheless, years after the release of the OIG report individuals like Mr. Kumar continue to suffer in ICE custody, experiencing lack of access to outdoor space, contact visitation with loved ones, and nourishing fresh food; while simultaneously enduring excessive use of force, racial discrimination, and retaliation against individuals who complain about these

² See, e.g., DHS, Office of Inspector General (“OIG”), *DHS OIG Inspector Cites Concerns with [Noncitizen] Treatment and Care at ICE Detention Facilities* (2017) (reporting instances of invasive procedures and substandard care; mistreatment, such as indiscriminate strip searches; long waits for medical care and hygiene products; expired, moldy and spoiled food; and detained persons being held in administrative segregation for extended periods without documented, periodic reviews required to justify continued segregation) available at: <https://www.oig.dhs.gov/news/press-releases/2017/12142017/dhs-oig-inspection-cites-concerns-detainee-treatment-and-care>.

conditions.³ Respondents are on notice of the inadequate medical and mental health care available at the Aurora facility and yet they fail to mitigate the violations of DHS’s own detention standards.⁴ Indeed, courts in this district have repeatedly echoed these concerns, likening detention at the Aurora facility to penal incarceration and calling the conditions “abhorrent,” allegations Respondents have not attempted to refute. *See, e.g., Arostegui-Maldonado*, 794 F. Supp. 3d 926, 940; *Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1195 (D. Colo. 2024) (noting the government did not contest allegations that incarceration in the Aurora detention center resembled “penal confinement”); *Daley v. Choate*, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023).

In immigration-detention cases, courts have regularly found that unlawful detention constitutes irreparable harm. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 1000 (9th Cir. 2017) (noting “irreparable harm to Plaintiffs of detention pursuant to bond amounts determined through a likely unconstitutional process”); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261-62 (W.D. Wash. 2025) (denial of bond hearing constituted irreparable harm). “The right to be free from government detention is one of the most basic guarantees of our democracy. [Petitioner’s]

³ The Colorado Sun, *Racial discrimination, excessive force and retaliation alleged at ICE detention center in Aurora*, Apr. 14, 2022, available at: <https://coloradosun.com/2022/04/14/aurora-detention-center/>; Denverite, *ACLU Colorado releases scathing report of Aurora’s private immigration detention center*, Sep. 18, 2019, available at: <https://denverite.com/2019/09/18/aclu-colorado-releases-scathing-report-of-auroras-private-immigrant-detention-center/>.

⁴ *See* AIC 2022 Complaint, “Re: Violations of ICE COVID-19 Guidance, PBNDS 2011, and Rehabilitation Act of 1973 at the Denver Contract Detention Facility, (Feb. 11, 2022) available at: https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/complaint_against_ice_medical_neglect_people_sick_covid_19_colorado_facility_complaint1.pdf; AIC/AILA 2019 Complaint, “Supplement—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility,” (Jun. 11, 2019) available at: https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf.

confinement inflicts immense stress and fear, which on its own, constitutes irreparable harm.” *Ercelik v. Hyde*, 2025 WL 1361543 (D. Mass. May 8, 2025), at *14 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (recognizing that the fear of being subject to unlawful detention may itself constitute irreparable harm)).

Furthermore, as a result of being detained, Mr. Kumar has been placed on an accelerated docket, with substantially reduced time and ability to prepare. Preparing his asylum case on extraordinarily short notice and while detained puts him at a substantial disadvantage versus his situation if Respondents had not illegally detained him. His detention in a Colorado jail, far from his out-of-state counsel, makes it extremely difficult for him to assist in preparation for his asylum hearing and puts him at a heightened risk of being returned to face persecution in India. *Cf. E.V. v. Raycraft*, 2025 WL 2938594, at *9 (N.D. Ohio Oct. 16, 2025) (irreparable harm where petitioners were unlawfully put into expedited removal proceedings and faced imminent deportation).

III. The balance of equities and public interest factors favor Petitioner.

The third and fourth TRO factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). The public interest weighs in favor of injunctive relief, since “DHS has no ‘interest in the perpetuation of unlawful agency action.’” *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022) (quoting *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). “To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *Id.* (internal quote marks omitted). Furthermore, “neither equity nor the public’s interest are furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022); see also *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 678-79 (9th Cir. 2021) (public

interest weighs “sharply” against unlawful agency or executive action). Conversely, Respondents have no legitimate interest in detaining Mr. Kumar in violation of the INA and his due process rights. *See, e.g., Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.”). “In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights.” *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997).

A temporary restraining order is in the public interest because “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014). If a TRO is not granted, the government would effectively be allowed to detain Mr. Ochoa in violation of the regulation, the IJ’s order, and due process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 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”).

Weighing the balance of hardships, Respondents face little or no hardship if required to release Mr. Kumar or conduct a bond hearing. By contrast, the hardships imposed on Mr. Kumar by the deprivation of his liberty and his inability to assist meaningfully in the preparation of his immigration case are substantial.

In short, all four TRO factors weigh strongly in Mr. Kumar’s favor.

IV. The Court should order Mr. Kumar's immediate release.

Mr. Kumar acknowledges that in a number of cases, courts in this district have ordered a bond hearing as a remedy for Respondents' violation of petitioners' statutory and constitutional rights. *See, e.g., Hernandez v. Baltazar*, 2025 WL 2996643, at *8 (D. Colo. Oct. 24, 2025). However, as the Government continues to violate the law and flout judges' decisions, an increasing number of federal judges have begun ordering immediate release as a remedy instead. *See, e.g., Villafranca Lara v. Ladwig*, 2026 WL 401204, at *10 (W.D. Tenn. Feb. 12, 2026) ("Because ICE's violations of § 1226(a) and of [petitioner's] procedural due process rights deprived him of his liberty for three months ... immediate, unconditional release is the appropriate remedy. If the Government later decides to detain [petitioner] under § 1226(a), they must do so lawfully, in conjunction with a bond hearing"); *Colina-Rojas v. Noem*, 2026 WL 412138, at *12 (W.D. Ky. Feb. 13, 2026) ("The United States is directed to release Petitioner ... immediately because of the unlawful detention in violation of her due process rights"); *Avilez Aguinaga v. Warden*, 2026 WL 266510, at *2 (S.D. Tex. Feb. 2, 2026) (noting that "[h]abeas is at its core a remedy for unlawful executive detention" and the "remedy for unlawful detention 'is, of course, release'"); *Villa Hernandez v. Kunes*, 2026 WL 411726, at *7 (M.D. Pa. Feb. 12, 2026) (granting immediate release); *Singh v. Carnes*, 2026 WL 446579, at *1-2 (D.N.M. Feb. 17, 2026) ("Respondents failed to articulate a legitimate interest in Petitioner's continued detention and therefore [the Court] orders his immediate release"). Petitioner could cite any number of additional, similar cases.

If, however, the Court orders a bond hearing, Petitioner respectfully requests that the burden be placed on the government by clear and convincing evidence. *See, e.g., Bah v. Noem*, 1:26-cv-39-CNS, 2026 WL 205642, at *2 (D. Colo. Jan. 27, 2026).

CONCLUSION

The Court should grant Mr. Kumar’s Petition for Writ of Habeas Corpus and order injunctive relief requiring his immediate release or a prompt bond hearing.

Dated: February 20, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court’s CM/ECF system this 20th day of February, 2026, which sent notice of such filing to all parties receiving electronic notice.

/s/ James D. Jenkins
Attorney for Petitioner