UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JAVIER ANDRES GARCIA CORTES, *Petitioner* v. ROBERT HAGAN,[1] *et al.*, *Respondents*	**Case No. 1:26-cv-294** **MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY INJUNCTION**

On January 24, 2026, Petitioner Javier Andres Garcia Cortes ("Mr. Garcia") filed a petition for a writ of habeas corpus on the basis that his immigration detention is unlawful and violates his Constitutional rights. *See* ECF No. 1. Mr. Garcia has already been detained and he was released just four months ago after this Court found the government was unlawfully subjecting him to mandatory detention. Respondents have recently re-detained Mr. Garcia despite the fact that he has not violated the terms of his release upon bond set by the immigration judge.

Mr. Garcia files this motion for emergency and injunctive relief not only because his detention is unlawful but because Respondents have failed to provide any information or justification for his recent arrest. Indeed, Respondents placed Mr. Garcia in custody on Wednesday, January 21, 2026, but as of January 25, Mr. Garcia does not appear to be listed in the Immigration and Customs Enforcement ("ICE") detention database. Mr. Garcia does not have a removal order and it is unclear on what statutory basis Respondents continue to detain him. He therefore requests emergency relief requiring his release or expedited consideration of this petition.

[1] Pursuant to Fed. R. Civ. P. 25(d), Mr. Garcia requests the Court automatically substitute Robert Hagan for Robert Guadian as the custodian in this action.

RELEVANT FACTS

Mr. Garcia is a native and citizen of Colombia. In April 2018, he traveled to the United States with a B-2 visitor visa and was inspected and admitted by immigration officers. *See* ECF No. 1-5, I-94. Since his arrival, he has resided continuously in the United States. Mr. Garcia has two sons, ages 15 and 7 years old, both of whom reside in the United States. Shortly after his arrival in the United States, Mr. Garcia met and began dating his now-ex-wife, who is a United States citizen. The couple married in 2019, but divorced in 2021 after she became abusive towards Mr. Garcia. In 2022, Mr. Garcia filed a petition for classification under the self-petitioning provisions of the Violence Against Women Act, and an application for adjustment of status. While his application was pending, USCIS granted his application for and a subsequent renewal of employment authorization. Mr. Garcia obtained advanced parole after he filed his application for adjustment of status. In 2024, he was able to visit family in Colombia and upon return to the United States, the Department of Homeland Security ("DHS") allowed him reentry into the U.S. after inspection at the airport, without abandoning his application for adjustment of status. *See* ECF No.1-6, Passport.

Subsequently, on May 9, 2025, the U.S. Citizenship and Immigration Services ("USCIS") determined that Mr. Garcia has established a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act, granting him access to public benefits in the U.S. for one year. *See* ECF No. 1-2. In August 2025, USCIS again renewed Mr. Garcia's employment authorization. Around that same time, Mr. Garcia appeared for work to paint the building that contains the ICE Denver Field Office. Upon his arrival, he was apprehended by ICE and placed in custody. ICE did not provide a warrant for arrest when they handcuffed and detained Mr. Garcia in August 2025. He was later served with a warrant and also a Notice to Appear, which

ICE amended (contrary to regulations regarding who is authorized to file charges of removal) to charge Mr. Garcia as an "arriving alien" under the theory that he is an applicant for admission who was "seeking admission." On August 26, 2025, Mr. Garcia filed a habeas petition in this Court. *See* Dkt. No. 1:25-cv-2677.

On September 16, 2025, the Court granted the petition, ruling that Mr. Garcia's detention was not mandatory as it was not governed by 8 U.S.C. § 1225(b)(2). *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025). The Court ruled that Mr. Garcia's detention violated both the Immigration and Nationality Act ("INA") and his due process rights. *Id.* at *2-4. On September 22, 2025, an immigration judge held a custody redetermination hearing at which DHS bore the burden of proof. The immigration judge declined to retain Mr. Garcia in custody and ordered him released from custody on bond of $15,000. ECF No. 1-1, Bond Order. The immigration judge's order explicitly found that Mr. Garcia was not a danger to the community and he was not a flight risk. *Id.* The judge's order contained no additional requirements or qualifications, including the imposition of reporting requirements with DHS.

On September 23, 2025, Mr. Garcia's obligor paid the bond and Mr. Garcia was released from custody. *See* ECF No. 1-7, Immigration Bond. On September 23, 2025, ICE provided Mr. Garcia a "call-in letter," directing him to report to ICE Enforcement and Removal Operations office shortly after his release from custody for a "check-in and case review." ECF No. 1-8, Call-In Letter.

Upon information and belief, at that first check-in, ICE imposed additional conditions that were not ordered by the immigration judge, including enrolling Mr. Garcia in the Intensive Supervision Appearance Program ("ISAP") that including monitoring through an app on his phone, wearing a GPS watch, daily biometric and photo submissions, and very frequent visits both

at his home and at the ICE Field Office. *See Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 68 (D. Mass. 2025) (concluding that ISAP conditions constituted "in custody"). Upon information and belief, at some point in December 2025, a photograph he sent did not properly register as him.

When Mr. Garcia reported for a check-in on January 21, 2026, ICE informed him that he had "failed" a photo identification and that he would therefore be re-detained. Upon information and belief, neither Mr. Garcia nor his obligor have received any paperwork detailing a supposed violation of his bond. *See* ECF No. 1-7 at 4 (discussing bond conditioned upon the delivery of an alien). As of the morning of January 25, 2026, Mr. Garcia still does not appear registered in the ICE detainee locator system, *see* Exhibit 1, although his family reports that he has called them from the detention facility in Aurora, Colorado.

ARGUMENT

Mr. Garcia seeks a temporary restraining order and/or preliminary injunction pursuant to Federal Rule of Civil Procedure 65 and the All Writs Act seeking his immediate release or, alternatively, precluding ICE from transferring Mr. Garcia outside of the District of Colorado pending resolution of his habeas petition.

This Court has the authority to issue this injunction under the All Writs Act. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district unless and until the Court issues a contrary order. *Arostegui-Maldonado v. Baltazar*, -- F. Supp. 3d --, 2025 WL 2280357, *14-15 (D. Colo. Aug. 8, 2025) (citing *Batooie v. Ceja*, 2025 WL 1836695, at *2 (D. Colo. July 3, 2025)); *see also Rivero Busto v. Lyons*, 1:25-

cv-3143, ECF Nos. 21, 28 (D. Colo. Jan. 20, 2026), *D.B.U. v. Trump*, 2025 WL 11065556 (D. Colo. Apr. 14, 2025); *Vizguerra-Ramirez v. Choate*, No. 1:25-cv-881 (D. Colo. Mar. 21, 2025).

To obtain a preliminary injunction, the moving party must demonstrate: (1) a substantial likelihood of success on the merits of the case; (2) that they are likely to suffer irreparable harm in the absence of the requested relief; (3) that the harm outweighs a harm to the opposing party; and (4) that the injunction would not adversely affect the public interest. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024); *Arostegui-Maldonado*, , 2025 WL 2280357, *4. Mr. Garcia meets this standard.

First, Mr. Garcia has a substantial likelihood of success on the merits. As explained in his habeas petition, Respondents' detention of Mr. Garcia is unlawful and violates his due process rights. ECF No. 1. In September 2025, an immigration judge found that Mr. Garcia is neither a flight risk nor a danger to the community and ordered his release on a $15,000 bond "to further mitigate any concerns that [Mr. Garcia] may abscond." ECF No. 1-1 at 4. The immigration judge set no conditions other than the payment of the monetary bond in order to secure Mr. Garcia's appearance at future removal proceedings. *Id.* Nevertheless, Respondents imposed ultra vires requirements including check-ins, GPS monitoring, and phone applications requiring the submission of facial recognition photos. These additional requirements were unlawful, as the statute and regulations do not provide ICE with the ability to set additional conditions on top of an immigration judge's order.As this Court recognized in September 2025, Mr. Garcia's custody falls under 8 U.S.C. § 1226(a), as he is a noncitizen who was lawfully allowed into the United States and he has been living in this country for years. *Garcia Cortes*, 2025 WL 2652880. For individuals encountered within the United States who are subject to 8 U.S.C. § 1226(a), ICE must make an initial custody determination, which is produced on a Form I-286, Notice of Custody

Determination. 8 C.F.R. § 236.1(c)(8); *see N-N- v. McShane*, 2025 WL 3143594, at *2-3 (E.D. Pa. Nov. 10, 2025) (explaining the statutory and regulatory framework for seeking release from immigration custody on bond); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 68-69 (D. Mass. 2025) (recognizing that ICE must make an intiial custody determination). As indicated on the Form I-286, ICE may choose to detain the noncitizen, or release the noncitizen on a monetary bond, on their own recognizance, or under enumerated conditions. *See* DHS Form I-286 (2026)[2]; *Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at *8 (D. Colo. Oct. 17, 2025) (noting that a Form I-286 "Notice of Custody Determination" specifically references 8 U.S.C. § 1226(a)); *N-N-*, 2025 WL 3143594, at *2 (recognizing that ICE has the initial ability to decide whether release a noncitizen).

If ICE declines to release the noncitizen or if the noncitizen wishes to challenge DHS's conditions of release, he or she may request a custody redetermination hearing before an immigration judge. 8 C.F.R. § 1003.19(e); *Chacon-Coral v. Weber*, 259 F. Supp. 2d 1151, 1156 (D. Colo. 2003); *Mendoza Gutierrez*, 2025 WL 2962908, at *7; *N-N-*, 2025 WL 3143594, at *2. The immigration judge may then issue an order that the noncitizen remain in custody or be released on a monetary bond, on their own recognizance, or on certain conditions. *See, e.g.*, *Khabazha v. United States Immigration and Customs Enforcement*, 2025 WL 3281514, at *2 (S.D.N.Y. Nov. 25, 2025) (noting that he immigration judge's bond order included ICE's discretionary authority to require the petitioner to wear an ankle monitor and attend regular check-ins); *Oliveria v. Albarran*, 2025 WL 3525923, at *1 (E.D. Cal. Dec. 9, 2025) (recognizing that the petitioner's release from custody "conditioned, among other things, on mandated reporting requirements under the Intensive Supervision Appearance Program.").

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[2] *See, e.g.*, https://www.aclum.org/app/uploads/2019/07/20190701_pb-barr_govt_status_report.pdf (Exhibits).

"If either party is dissatisfied with the immigration judge's custody determination, there are two methods of recourse: (a) appeal the immigration judge's order" to the Board of Immigration Appeals, or "(b) after an initial bond redetermination, a detainee may request a subsequent bond redetermination upon a showing that their 'circumstances have changed materially since the prior bond redetermination.'" *N-N-*, 2025 WL 3143594, at *3 (quoting 8 C.F.R. §§ 1236.1(d)(3), 1003.19(a), 1003.19(e)); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1179 (D. Colo. 2024). But ICE may not unilaterally set its own conditions outside of those set by the immigration judge on custody redetermination. *Orellana Juarez*, 788 F. Supp. 3d at 69. This is because "based on ICE's own regulations, an immigration judge and the BIA may determine custody conditions. Permitting ICE to impose additional conditions *after* an immigration judge has ordered release and set conditions renders the administrative adjudicatory process null." *N-N-*, 2025 WL 3143594, at *3.

Here, instead of appealing any disagreement with the immigration judge's order to the Board of Immigration Appeals, ICE unilaterally imposed numerous and restrictive conditions upon Mr. Garcia's release, notwithstanding the lack of any authority to do so under the immigration judge's bond order. ECF No. 1-1. It then concluded that Mr. Garcia violated the terms of those conditions and re-detained him. But at no point prior to placing Mr. Garcia in handcuffs did ICE inform the immigration court—or Mr. Garcia or his bond obligor—that it considered Mr. Garcia in violation of the (ultra vires) conditions. Respondents' actions in unilaterally imposing the additional conditions and then re-detaining Mr. Garcia for allegedly violating those ultra vires conditions were outside the scope of ICE's authority and were thus unlawful. *N-N-*, 2025 WL 3143594, at *3.

Moreover, ICE's actions violated his substantive and due process rights. First, ICE violated Mr. Garcia's liberty interest in remaining free from custody, after the immigration judge found him to not be a flight risk or a danger to the community. *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); *J.E.H.G. v. Chesnut*, 2025 WL 3523108, at *10 (E.D. Cal. Dec. 9, 2025); *Gamez Lira v. Noem*, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025). Second, Respondents' failure to follow their own regulations upon disagreeing with the immigration judge's custody redetermination order violated Mr. Garcia's procedural due process rights. *J.E.H.G. v. Chestnut*, 2025 WL 3523108, at *10 (E.D. Cal. Dec. 9, 2025); *Valdez v. Joyce*, -- F. Supp. 3d --, 2025 WL 1707737, at *3 (S.D.N.Y. 2025). Third, Respondents failed to follow the requirement for an individualized assessment that a noncitizen presents a danger or a flight risk prior to re-detaining him. *Campbell v. Almodovar*, 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 15, 2025); *Padilla v. U.S. Immigration and Customs Enforcement*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023).

Relating to the procedural due process claims, the balancing test discussed in *Mathews v. Eldridge* weighs in favor of Mr. Garcia. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Specifically, this involves a three-factor balancing test weighing: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, or additional or substitute procedural safeguards"; and (3) "the Government's interest." *Mathews*, 424 U.S. at 335. All three factors weigh in favor of Mr. Garcia.

First, nonpunitive detention without an opportunity to promptly challenge that detention before a neutral decisionmaker violates the Constitution. *Padilla*, 704 F. Supp. 3d at 1172; *J.E.H.G.*, 2025 WL 3523108, at *10. Mr. Garcia also has a liberty and property interest in his release from custody. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Khabazha*, 2025 WL 3281514,

at *5 (collecting cases); *Pinchi*, 792 F. Supp. 3d at 1033. Prior to his unlawful detention in August 2025, Mr. Garcia had been living in the United States for years, recently with the additional benefits provided by USCIS's prima facie determination of eligibility for lawful immigration status, and had been lawfully working and caring for his sons. He has no criminal history and strong community ties. His re-detention compromises his employment and ability to care for his children.

Second, there is a risk of erroneous deprivation because Mr. Garcia's detention is not justified. *J.E.H.G.*, 2025 WL 3523108, at *12. "Petitioner's re-detention without any change in circumstances or procedure establishes a high risk of erroneous deprivation of his protected liberty interest." *Valdez*, 2025 WL 1707737, at *3. Here, ICE provided no information to Mr. Garcia or his bond obligor that would explain the reasoning behind his re-detention, nor had there been any change in circumstances that could possibly justify the re-detention. In fact, ICE detained Mr. Garcia when he appeared at a scheduled check-in. *See Kaur v. United States Department of Homeland Security*, -- F. Supp. 3d --, 2025 WL 3706724, at *5 (E.D. Cal. Dec. 22, 2025) (noting that it was the petitioner's "compliance with routine ICE check-ins . . . that led to his detention") (marks omitted).

Third, the government can identify no interest, as there is no indication that Mr. Garcia is a flight risk or a danger to the community. He participated in all of ICE's additional requirements—despite there being no immigration court order to do so—and has appeared to every check-in. There is no reason, outside perhaps complying with DHS requirements for ICE to detain as many people as possible, to detain Mr. Garcia at this time. Indeed, while Respondents have an interest in Mr. Garcia appearing before his removal proceedings, the immigration judge's grant of a $15,000 bond was sufficient consideration of that interest. ECF No. 1-1 at 4. Moreover, detention

serves no purpose at this time when USCIS has indicated that Mr. Garcia is prima facie eligible for relief but that his application will not be processed until at least May 2026. *See* ECF No. 1-2. Weighed against the "staggering" "costs to the public of immigration detention[,]" *J.E.H.G.*, 2025 WL 3523108, at *12, there is no justifiable reason to detain Mr. Garcia when he is neither a flight risk nor a danger to the community. Thus, it is clear that Respondents have violated Mr. Garcia's due process rights and he has demonstrated a likelihood of success on the merits of his habeas petition.

"The second preliminary-injunction factor asks whether irreparable injury will befall the movants without an injunction." *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 942 (D. Colo. 2025) (citing *Free the Nipple—Fort Collins,* 916 F.3d 792, 805 (10th Cir. 2019)). Mr. Garcia suffers irreparable harm each day that he remains detained and separated from his family. This detention is an ongoing violation of his Fifth Amendment rights. It is well-settled in the Tenth Circuit that a constitutional violation constitutes an irreparable injury. *Free the Nipple—Fort Collins*, 916 F.3d at 806 (citing *Elrod v. Burns*, 427 U.S. 347, 373–74, (1976); *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012) ("[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary") (citation omitted; alteration in original)). Mr. Garcia easily meets this standard.

"Finally, the balance of equities and the public interest factors 'merge' when the Government is the party opposing the injunction." *Arostegui-Maldonado*, 794 F. Supp. 3d at 943 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). The public has no interest in the government not following its own regulations and re-detaining individuals without due process. Likewise, any equity that ICE may have in seeking to enforce immigration laws has no place in this case where

USCIS, a sister agency within DHS, has determined that Mr. Garcia is prima facie eligible for immigration relief. These final two factors also heavily weigh in Mr. Garcia's favor.

In terms of remedy, this Court should order immediate release and an injunction precluding Respondents from imposing any conditions beyond those established by the immigration judge in the September 2025 custody redetermination order. If Mr. Garcia commits a crime or does not appear for an immigration court hearing, the immigration judge may cancel the bond, order his re-detention, and reconsider any necessary conditions at that point. But to otherwise allow ICE to set additional conditions beyond those imposed by the immigration judge would essentially erase the immigration judge's neutral determination and allow ICE to ignore the regulatory requirements of how to challenge a bond re-determination.

Finally, even if the Court declines to order Mr. Garcia's release at this time, he requests an order precluding Respondents from transferring him out of this jurisdiction pending resolution of this habeas matter. Such an order is warranted in light of Respondents' practice of transferring individuals around the country and the fact that ICE has not even registered Mr. Garcia as detained in their online system, despite having held him in custody for the past 5 days.. Mr. Garcia has a right to consult with his attorney, which Respondents complicate by failing to provide any transparency about Mr. Garcia's location. Thus, Mr. Garcia requests the Court order he remain in this district where he can communicate and visit with his family and counsel while the Court considers this case.

The government would not be prejudiced by such request. Although it has discretion regarding where to detain individuals, it cannot do so in violation of the law and Constitution and it must comply with both while Mr. Garcia remains in removal proceedings. *See Arostegui-*

Maldonado, 794 F. Supp. 3d at 948-50; *D.B.U.*, 2025 WL 11065556; *Abrego Garcia v. Noem*, 2025 WL 1021113, at *1, 2 (4th Cir. Apr. 7, 2025) (order denying stay) (Thacker, C.J, concurring).

NO BOND IS WARRANTED UNDER RULE 65(c)

The Court should not require Mr. Garcia to provide security prior to issuing an injunction. Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." As in *Arosegui-Maldonado*, Respondents will not be harmed by this order nor would they suffer harm if the order was overturned. 794 F. Supp. 3d at 950. "[G]iven the important constitutional rights at issue in this case," no bond should be required.

CONCLUSION

For the foregoing reasons, Mr. Garcia requests the Court issue an order requiring his immediate release and enjoining Respondents from imposing any conditions on his release other than those set by the immigration judge in the September 2025 order.

Respectfully submitted,

January 25, 2026

Respectfully submitted,

/s/ Jessica A. Dawgert

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