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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Case No. 1:26-cv-00434

HUY HOANG NGUYEN,
Petitioner

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,
Respondents

PETITIONER-PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Petitioner-Plaintiff, Huy Hoang Nguyen ("Mr. Nguyen"), moves for a temporary restraining order against Respondents-Defendants ("Defendants") pursuant to Rule 65 and the All Writs Act. Defendants incarcerate Mr. Nguyen at the Immigration and Customs Enforcement ("ICE") Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility"). Defendants deny Plaintiff his liberty despite lacking the authority to do so. The Court should order Plaintiff's immediate release. The Court should further enjoin Defendants from transferring Plaintiff outside of the Court's jurisdiction while it considers his case.

I. Factual Background.

On August 7, 2025 and immigration judge ("IJ") found that Mr. Nguyen would more likely than not experience persecution if removed to his country of citizenship, Vietnam. Exh. 1. Mr. Nguyen first entered the United States in October of 2024 after fleeing Vietnam, hoping to request asylum in the United States. While the IJ denied his asylum application, the IJ's grant of withholding of removal pursuant to 8 U.S.C. § 1231(b)(3) prevents ICE from removing Mr. Nguyen to Vietnam. *See* 8 U.S.C. § 1231(b)(3). Neither Mr. Nguyen nor ICE appealed that August 7, 2025 decision. Exh. 1. As of that date, Mr. Nguyen was subject to a final order of removal to Vietnam and ICE was subject to a final order preventing it from removing Mr. Nguyen to Vietnam. ICE kept Mr. Nguyen in its custody pursuant to 8 U.S.C. §§ 1231(a)(1), (2).

ICE interviewed Mr. Nguyen pursuant to its regulatory obligations in 8 C.F.R. § 241.4(d) in October of 2025. ICE did not give Mr. Nguyen notice of the interview. During the interview, ICE told Mr. Nguyen that it sent messages to several countries requesting that ICE be allowed to remove him to one of those countries. ICE did not tell Mr. Nguyen to which countries it sent requests, but it did tell Mr. Nguyen that each request was rejected. ICE asked Mr. Nguyen whether

there was another country to which he wanted to be deported; Mr. Nguyen said no. ICE told Mr. Nguyen that he would therefore be incarcerated until the end of the Trump Administration.

During the October 2025 interview, ICE did not ask Mr. Nguyen where he would live if released. ICE did not ask Mr. Nguyen with whom he would live if released. ICE did not ask Mr. Nguyen his employment history. ICE did not ask Mr. Nguyen about his family or community ties to the United States. ICE did not ask Mr. Nguyen whether he had documents in support of release. ICE did not ask Mr. Nguyen to sign any documents related to the October 2025 interview. ICE then issued Mr. Nguyen a "Decision to Continue Detention" letter. In the letter, ICE concluded that Mr. Nguyen's continued incarceration was necessary because he failed to demonstrate that, if released, he would not pose a danger to the community, that he posed a significant flight risk, and that ICE was in receipt or expects to be in receipt of travel documents to effectuate his removal. Exh. 2.

ICE interviewed Mr. Nguyen again on January 25, 2026. ICE did not give Mr. Nguyen prior notice of the interview. During the interview, Mr. Nguyen confirmed that ICE possessed his only travel document, a Vietnamese passport. Mr. Nyugen also provided ICE evidence of his LPR cousin and her willingness to support him emotionally and financially and with housing if released. During the second interview, ICE did not ask Mr. Nguyen to sign any documents related to securing his removal to another country. ICE also did not advise Mr. Nguyen that it was seeking his removal to a third country. Exh. 3.

During his 181 days incarcerated at the Aurora Facility, ICE has never shown Mr. Nguyen a travel document to another country. ICE has never asked Mr. Nguyen to sign papers to request travel documents to another country.

As of today, Mr. Nguyen has been deprived of his liberty at the Aurora Facility for 181 days since his removal order became final.

II. Legal Standard for Granting Preliminary Relief.

Mr. Nguyen is entitled to preliminary relief: (1) he is likely to succeed on the merits; (2) he will suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003). The Court likewise has independent authority under habeas corpus, 28 U.S.C. § 2241, to order the immediate release of detained persons from unlawful confinement.

III. Legal Argument – The Court Should Order Preliminary Relief

a. Mr. Nguyen is Likely to Succeed on the Merits.

ICE's decision to keep Mr. Nguyen incarcerated is unlawful. He is likely to succeed in his petition and the Court should grant this Motion.

i. *Mr. Nguyen's Ongoing Incarceration Violates the Statute and Constitution*

ICE is generally required to physically remove someone subject to a final removal order during the 90-day removal period. 8 U.S.C. § 1231(a). The removal period begins on: "(i) [t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Incarceration during the removal period is mandatory. 8 U.S.C. § 1231(a)(2). Under 8 U.S.C. § 1231(a)(6), ICE "may" keep someone incarcerated beyond the 90 days under limited circumstances. 8 U.S.C. § 1231(a)(6).

In *Zadvydas*, the U.S. Supreme Court held that 8 U.S.C. § 1231(a)(6), when "read in light of the Constitution's demands, limits a [noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." 533 U.S.

at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id.* at 699–700.

The "presumptively reasonable period of detention" for someone subject to a final order of removal is six months. *Zadvydas*, 533 U.S. at 701. ICE's administrative regulations also recognize that the Headquarters Post-Order Detention Unit ("HQPDU") has a six-month period for determining whether there is a significant likelihood of a noncitizen's removal in the reasonably foreseeable future. 8 C.F.R. § 241.4(k)(2)(ii). ICE cannot continue to detain someone beyond the presumptive six months pursuant to 8 U.S.C. § 1231(a)(1)(C) except in limited circumstances. "A review of the case law shows that the courts have read § 1231(a)(1)(C) narrowly." *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 501 (S.D.N.Y. 2009) (collecting cases). "The Congressional intent underlying § 1231 is for the Attorney General to remove a [ ] [noncitizen] subject to an order of removal within the 90-day removal period, if possible." *Farez-Espinoza*, 600 F. Supp 2d at 502; *Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005). It is "the responsibility of [ICE] to make a bona fide attempt to do so within the removal period." *Farez-Espinoza*, 600 F.Supp.2d at 502. When ICE does not fulfill its responsibility, § 1231(a)(1)(C) does not apply. *Id.*; *Nzayikorera v. Fabbricatore*, 21-CV-02037-RMR, 2021 WL 9385836, at *2 (D. Colo. Sep. 9, 2021) ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute") (citation and quotations omitted).

After six months of incarceration, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. A petitioner

need not show that removal is not significantly likely; rather, one must merely show that there is *good reason* to believe that removal is not significantly likely. *Id.*; *Aguilar v. Noem*, 25-cv-03463—NYW, 2025 WL 3514282, at *4 (D. Colo. Dec. 8, 2025).

The good reason standard is satisfied "by, inter alia, showing the existence of either institutional barriers to repatriation or obstacles to . . . removal." *Aguilar*, 2025 WL 3514282, at *4 (citation omitted) (collecting cases). Those barriers include a grant of 8 U.S.C. § 1231(b)(3) withholding of removal to the only country to which someone has citizenship. *Id.* ("Because Petitioner has been granted withholding of removal to his country of citizenship and there are no other countries currently identified that would accept him, Petitioner has shown good reason to believe that there is no significantly likelihood of removal in the reasonably foreseeable future"). That is exactly the situation here.

Mr. Nguyen therefore met his threshold burden to show removal is not reasonably foreseeable because he has a final grant of withholding of removal to the only country to which he has citizenship. ICE must now release Mr. Nguyen unless it can who that removal is significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701 (after "the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence to rebut that showing" or the petition will be granted); *Morales-Fernandez*, 418 F.3d at 1124 ("The Government having brought forward nothing to indicate that a substantial likelihood of removal subsists despite the passage of six months . . . the petitions for habeas corpus should have been granted"); *Nzayikorera v. Fabbricatore*, 21-CV-02037-RMR, 2021 WL 9385836 (D. Colo. Sep. 9, 2021) (same). ICE cannot meet that burden with "bare assertions" that it is pursuing removal to a third country and that it

believes removal is significantly likely in the reasonably foreseeable future. *Aguilar*, 2025 WL 3514282, at *5–6. It must instead provide concrete evidence of that likelihood. *Id.*

ICE must release Mr. Nguyen forthwith. *Zadvydas*, 533 U.S. at 699–700. ICE no longer has the statutory authority to keep Mr. Nguyen incarcerated, and its decision to keep him jailed pursuant to § 1231 raises serious constitutional concerns. *Zadvydas*, 533 U.S. at 689–92.

b. Mr. Nguyen Will Suffer Irreparable Harm in the Absence of a Temporary Restraining Order.

Mr. Nguyen suffers irreparable harm each day he remains unlawfully incarcerated. 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). "Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 805–06 (10th Cir. 2019) (quotation omitted); (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012)); *Connecticut Dept. of Environmental Protection 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"). Courts routinely find far less weighty interests justify preliminary relief. *Ohio Oil Co. v. Conway*, 279 U.S. 813 (1929) (tax payment); *RoDa Drilling v. Siegal*, 552 F.3d 1203, 1210-11 (10th Cir. 2009) (control of real property); *Bray v. QFA Royalties, LLC*, 486 F.Supp.2d 1237 (D. Colo. 2007) (terminating sandwich shop franchise agreements).

Underscoring this harm, the government itself documented alarmingly poor conditions in ICE detention centers.[1] Nevertheless, years after the release of the OIG report individuals like Mr. Nguyen 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

[1] *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.[2] 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' own detention standards.[3] The harm Mr. Nguyen suffers while unlawfully jailed is irreparable.

c. Balancing the Equities and Public Interest Weigh Heavily in Favor of Relief.

The third and fourth factors tip strongly in Mr. Nguyen'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 a constitutional right hangs in the balance," it "usually trumps any harm to the defendant." *Free the Nipple-Fort Collins*, 916 F.3d at 806. *Cf. Awad*, 670 F.3d at 1131 ("[W]hen the law that voters wish to enact is likely unconstitutional, their interests do not outweigh [a Petitioner's interest] in having his constitutional rights protected"). The "public interest is best served by ensuring the constitutional rights of person within the United States." *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *13 (S.D.N.Y. 2018) (internal citation omitted); *Free the Nipple-Fort Collins v. City of Fort Collins,*

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[2] 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/.

[3] *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/sites/default/files/research/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; AIC/AILA 2018 Complaint, "Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility,"[3] (Jun. 4, 2018) *available at*: http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf.

Colorado, 237 F. Supp. 3d 1126, 1134, *aff'd*, 916 F.3d 792 (10th Cir. 2019) (It is "always in the public interest to prevent the violation of a party's constitutional rights") (quoting *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998)); *Stawser v. Strange*, 44 F. Supp.3d 1206, 1210 (S.D. Ala. 2015)). *See Adams ex rel. Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996) ("The public interest would be best served by enjoining the defendants from infringing on the plaintiff's right to equal protection"). On the other hand, the government cannot claim injury from an order enjoining unlawful action. *Wages & White Lion, Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021) ("There is generally no public interest in … unlawful agency action").; *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Here, the balance of harms and public interest both weigh heavily in Mr. Nguyen's favor. Defendants continue to violate Mr. Nguyen's liberty interest while he suffers in detention. *Wingo*, 407 U.S. at 532–33 ("[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"); *Velasco Lopez*, 978 F.3d at 850 (same). Meanwhile, DHS would face no hardship if Mr. Nguyen were released from its custody. Most cases monitored by ICE—approximately 98 percent—are for people who are not in the agency's custody, indicating that DHS has extensive experience overseeing non-detained dockets.[4] In fact, there is formal infrastructure that recognizes the presence of people with final orders of removal in the United States. *See* 8 C.F.R. § 274a.12(c)(18) (affording the ability to obtain employment authorization for persons ordered removed where the person's deportation cannot be effectuated, it is impractical, or contrary to public interest).

[4] Congressional Research Service, *Immigration: Alternatives to Detention (ATD) Programs*, Jul. 8, 2019, *available at*: https://fas.org/sgp/crs/homesec/R45804.pdf.

Moreover, since 2001, U.S. government officials have adhered to the Supreme Court's order in *Zadvydas* and have significant experience monitoring persons with final orders of removal and has the authority, infrastructure, and resources to effectuate deportations in the future should circumstances change. *See Hamama v. Adducci*, 349 F. Supp. 3d 665, 670 (E.D. Mich. 2018), *vacated and remanded*, 946 F.3d 875 (6th Cir. 2020) (class action brought by Iraqi citizens with final orders of removal who lived freely in the United States until they were arrested by DHS, indicating that DHS has the ability and capacity to arrest persons post-removal order in an attempt to effectuate deportation); *Ibrahim v. Acosta*, 326 F.R.D. 696, 698 (S.D. Fla. 2018) (litigation brought by group of Somalians with final orders of removal who were living in the community before DHS arrested and attempted to deport them).

Finally, Mr. Nguyen's release is in the public interest given it is less costly for the government than continued detention. DHS widely utilizes alternatives to detention to monitor cases after release from custody via bond or parole.[5]

In sum, there is no countervailing government or public interest fueling Mr. Nguyen's continued detention and he makes a strong showing that both the balance of harms and the public interest weigh in his favor.

IV. Conclusion

Accordingly, the Court should grant a temporary restraining order (or preliminary injunction) requiring either Plaintiff's immediate release from custody. The Court should further enjoin the Defendants from transferring Mr. Nguyen outside the District of Colorado while this matter is pending.

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[5] ICE, *Alternatives to Detention*, Jul. 6, 2023, https://www.ice.gov/features/atd ("Through the end of July 2022, approximately 4.5 million noncitizens were being overseen on ICE's non-detained docket.")

Dated: February 4, 2026

Respectfully submitted,

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CERTIFICATE OF CONFERRAL

I hereby certify that consistent with D. Colo. Local Rule 7.1, before filing this motion, I conferred with counsel for Defendants-Respondents, Kevin Traskos and Victor Scarpato of the US Attorney's Office for the District of Colorado, regarding the relief requested herein. Defendants-Respondents have yet to provide their position on this motion.

/s/ Conor T. Gleason
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Attorney for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on February 4, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Leslie Bezanilla, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail within 72 hours of filing or pursuant to any forthcoming Court order requiring something else. Kevin Traskos, attorney for Respondents, confirmed with undersigned counsel that he will accept service on behalf of all Respondents.

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