

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

Civil Action No.:

MORY CHERIF, an individual,

Petitioner,

v.

PAMELA J. BONDI, Attorney General,
KRISTI L.A. NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Acting Director of Immigration and Customs Enforcement,
Immigration and Customs Enforcement,
DAREN K. MARGOLIN, Director for Executive Office for Immigration Review,
Executive Office for Immigration Review,
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs
Enforcement,
and,
JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado,

Respondents.

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Mory Cherif (“Mr. Cherif”), through undersigned counsel, hereby brings this Emergency Motion for Temporary Restraining Order (“TRO”), as follows:

CERTIFICATE REGARDING NOTICE UNDER F.R.C.P. 65

Undersigned counsel intends to serve the TRO and the habeas corpus petition on Respondents contemporaneously with filing. Counsel has not provided advance notice due to reasonable concern that Respondents may attempt to remove Mr. Cherif from the Court’s jurisdiction to evade judicial review and impair his legal rights. As set forth below, Respondents have already transferred Mr. Cherif across multiple jurisdictions.

INTRODUCTION

Respondents are detaining Mr. Cherif in violation of law, unlawfully depriving him of his liberty and denying him the right to be released on bond. Mr. Cherif, an asylum seeker, thus requests a TRO ordering his immediate release from custody or, in the alternative, ordering the Respondents to provide him with a constitutionally compliant bond hearing that does not apply *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), within seven days of the grant of this TRO. To protect his legal rights, Mr. Cherif further requests that the Court order that he not be removed from Colorado during the pendency of his habeas corpus petition and that he and his counsel be provided at least 72 hours' advance notice prior to any removal or movement out of the Denver Contract Detention Facility in Aurora, Colorado, where he is currently detained.

As detailed in his Petition for a Writ of Habeas Corpus, Mr. Cherif has been unlawfully detained in federal custody since May 28, 2025. He entered the United States on February 17, 2024, and turned himself in to immigration officials. The following day, the Department of Homeland Security (“DHS”) issued an Order of Release on Own Recognizance (“OREC”), expressly reflecting that he had been apprehended and released pursuant to § 236 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226. *See* Habeas Petition, Ex. A. For more than a year thereafter, Mr. Cherif lived openly in Minnesota, complied with all directives, and appeared—*pro se*—at two immigration hearings as required.

On May 28, 2025, Mr. Cherif voluntarily appeared for a master calendar hearing at the Fort Snelling Immigration Court. During that proceeding, government counsel orally and without notice moved to dismiss the then-pending removal proceedings. The Immigration Judge (“IJ”) did not explain the legal consequences of dismissal, did not advise Mr. Cherif of his right to consult with counsel, and provided no meaningful opportunity to respond. Instead, the IJ required Mr.

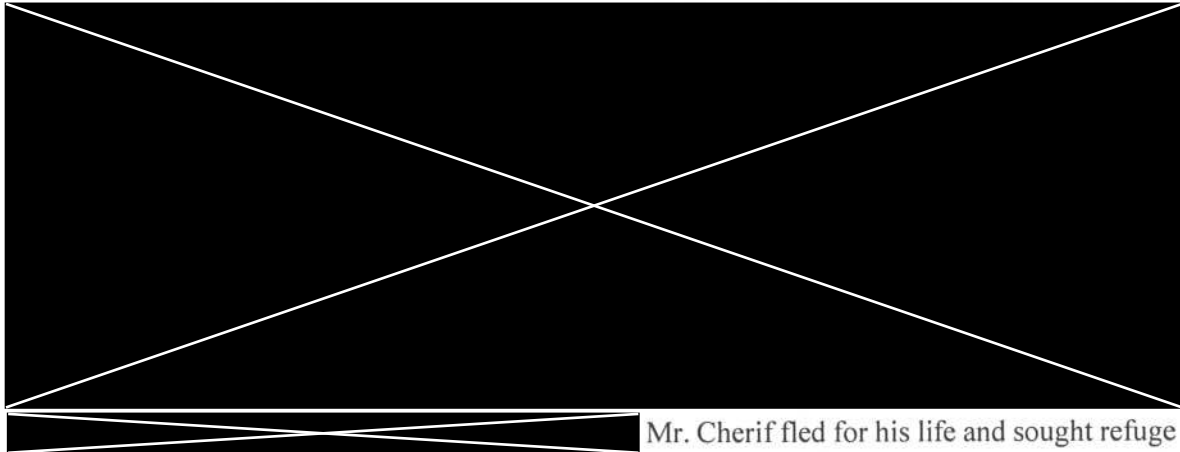
Cherif—appearing without counsel—to address the government’s motion on the spot. The IJ then dismissed Mr. Cherif’s removal proceedings.

After the hearing concluded, Mr. Cherif left the courtroom believing he remained at liberty. Moments later in the courthouse lobby, DHS agents arrested him—along with several other Mandingo-Koniaka speakers—without explaining the legal basis for the arrest. Agents did not serve him with an I-200 warrant or any other charging document. Nor did DHS allege any violation or revocation of his February 18, 2024, OREC, which had authorized his release under § 1226. Since that arrest, Mr. Cherif has remained in custody. His timely appeal of the IJ’s dismissal order remains pending before the Board of Immigration Appeals (“BIA”), yet he has not even received a briefing schedule.

As set forth in Mr. Cherif’s habeas corpus petition, Mr. Cherif’s detention is unlawful, and Respondents continue to detain him despite his detention violating his constitutional and other legal rights. Individuals similarly situated to Mr. Cherif were detained under 8 U.S.C. § 1226, not 8 U.S.C. § 1225, and the plain text, legislative history, and longstanding administrative practice reinforce the conclusion that Respondents cannot mandatorily detain him under the auspices of 8 U.S.C. § 1225(b). Mr. Cherif is very likely to prevail on the merits of his case because his detention is unlawful and, absent the ability to post bond, is a quintessential irreparable harm warranting a grant of habeas corpus and injunctive relief. Respondents conversely have no legitimate interest in unlawfully detaining Petitioner. The Court should grant this motion.

FACTS

Mr. Cherif is a native and citizen of Guinea who speaks Mandingo-Koniaka and virtually no English, thus requiring translation services to navigate the U.S. immigration system. Habeas Pet. at ¶ 32. Mr. Cherif is [REDACTED]



in the United States. *Id.*

Mr. Cherif entered the United States on February 17, 2024. At some point after he crossed into the U.S., Mr. Cherif turned himself in to immigration officials. *Id.* at ¶ 34. He was briefly detained before being released pursuant to a February 18, 2024, OREC that acknowledges DHS’s custody of Mr. Cherif under the “discretionary detention” regime in INA § 236(a)¹ (8 U.S.C. § 1226(a)) and released him as he was neither a flight risk nor a public safety danger. *Id.* He thereafter resided in Brooklyn Park, Minnesota, complied with all directives, and timely filed his Application for Asylum and Withholding of Removal (Form I-589). *Id.* at ¶¶ 35-36.

On March 19, 2025, Mr. Cherif appeared *pro se* and in person for a master calendar hearing at the Fort Snelling Immigration Court, consistent with the directives on his February 18, 2025, Notice to Appear. *Id.* at ¶ 37. The Immigration Court never went on the record. *Id.* After Mr. Cherif and other Mandingo-Koniaka speakers arrived, they were informally told that the Court had not been able to secure a Mandingo-Koniaka speaking interpreter, and that the master

¹ 8 U.S.C. § 1226(c), which governs mandatory detention for noncitizens charged or convicted for certain criminal (or related) acts is irrelevant to Cherif’s detention as he has never been charged, let alone arrested for or convicted of, any crime.

calendar hearing would be rescheduled. *Id.* No transcript or recording exists of the March 19 non-hearing because the IJ never went on the record. *Id.*

On May 28, 2025, Mr. Cherif appeared *pro se* before the Fort Snelling Immigration Court for a rescheduled master calendar hearing. *Id.* at ¶ 38. During his perfunctory, five-minute hearing, Mr. Cherif was only given access to a translator for Mandingo, but Mr. Cherif speaks Mandingo-Koniaka, a dialect that differs enough from Mandingo to inhibit communication. *Id.* A review of the master calendar hearing recording reflects that, after interacting with the interpreter provided by the U.S. Government, Mr. Cherif informed the IJ that he understood the interpreter only “a little bit.” *Id.* Apparently as part of a national scheme, DHS then made an unnoticed, unsupported, and unexplained motion to dismiss removal proceedings, stating only that it was in the “best interests of the government.”² *Id.*; *see also* Notarized Transcript of May 28, 2025, Hearing, Exhibit B.

The asserted “best interests of the government” became immediately clear. As soon as he exited the courtroom, Mr. Cherif’s rights were violated when he was arrested by U.S. Immigration and Customs Enforcement (“ICE”) and taken into custody. *Id.* at ¶ 39. At the time of his arrest, DHS did not explain the basis for taking him into custody. *Id.* DHS agents did not serve Mr. Cherif with an I-200 warrant for his arrest (or any other document), nor did DHS allege any violation (or revocation) of the I-220 “Order of Release on Own Recognizance” dated February 18, 2024, which acknowledges that DHS originally apprehended—and then released Mr. Cherif—pursuant to “section 236 of the” INA (8 U.S.C. § 1226). *Id.* The government sought to eliminate his pending regular removal proceeding (the mechanism through which an

² *See, e.g.,* Sarah Matussek, “New phase of Trump deportation push: ICE arrests at immigration court,” *Christian Science Monitor* (May 28, 2025), <https://www.csmonitor.com/USA/Politics/2025/0528/immigration-court-ice-deportation-trump>.

application for asylum and withholding of removal is to be adjudicated) and, in the same breath, incarcerated him, whisking him away from the State of Minnesota, the place where he had been living for more than one year. *See id.* at ¶¶ 38-39.

Since May 28, 2025, Mr. Cherif has remained unlawfully detained. *Id.* at ¶ 41. He has been transferred from Minnesota to Iowa, then to Louisiana, and finally to Colorado. *Id.* at ¶ 39. Meanwhile, on June 4, 2025, Mr. Cherif timely appealed the dismissal of his removal proceedings to the Board of Immigration Appeals (“BIA”). *Id.* at ¶ 40. That appeal remains pending and a briefing schedule has not been set. *Id.*; *see also* ACIS/ECAS Docket, Hab. Pet. at Ex. C. This timely appeal means the immigration judge’s May 28, 2025 order dismissing removal proceedings is not “administratively final,” and Mr. Cherif remains in ongoing removal proceedings under 8 U.S.C 1229a. *See, e.g.*, EOIR Prac. Man. Ch 6.2 (“After an Immigration Judge issues a final decision on the merits of a case . . . the order is automatically stayed for the 30-day period for filing an appeal with the Board... If a party appeals an Immigration Judge’s decision on the merits of the case... The stay remains in effect until the Board renders a final decision in the case.”). *Id.* at ¶ 40.

The result is stark: Mr. Cherif has been incarcerated for over 264 days without a meaningful hearing on his claim for asylum and withholding of removal, without any progress on his appeal, and without any scheduled opportunity to be heard. *Id.* at ¶¶ 40-42. Binding regulations require the Board to issue “a decision on the merits as soon as practicable, **with a priority for cases or custody appeals involving detained noncitizens.**” 8 C.F.R. 1003.1(e)(8) (emphasis added). Yet, as of the submission of this habeas petition, the BIA has not yet even set a briefing schedule in Mr. Cherif’s appeal. *See* Hab. Pet. Ex. C. This is precisely the type of

indeterminate detention without adequate process that a habeas corpus petition is designed for, and that both 8 U.S.C. § 1226 and the U.S. Constitution’s Fifth Amendment prohibit.

ARGUMENT

I. THE COURT HAS JURISDICTION.

“Challenges to immigration detention are properly brought directly through habeas.” *Abanil v. Baltazar*, No. 25-cv-4029, 2026 WL 100587, at *3 (D. Colo. Jan. 14, 2026) (quoting *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004)).

II. EXHAUSTION IS FUTILE WHEN RESPONDENTS COLLABORATE IN DEVELOPING A NATIONWIDE CHANGE OF POLICY

The Supreme Court has noted that prudential exhaustion is not required when doing so would be futile or “the administrative body . . . has . . . predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the Board of Immigration Appeals (“BIA”)— i.e., the Department of Justice — decided *Matter of Yajure Hurtado*, in which the Department improperly held that 8 U.S.C. § 1225(b)(2)(A) governs custody of aliens like Mr. Cherif. 29 I. & N. Dec. 2016 (BIA 2025). Because *Hurtado* binds the underlying administrative proceedings, 8 C.F.R. § 1003.1(g)(1), those proceedings are rendered entirely futile. Any argument for exhaustion would be predicated on giving the Board first crack, but the Board has already spoken.

Furthermore, “[t]here is no useful purpose to proceeding through the administrative remedy process where the petitioner presents a pure question of law.” *Vang v. Eischen*, No. 23-CV-721 (JRT/DLM), 2023 WL 5417764, at *3 (D. Minn. Aug. 1, 2023). “A party also may escape the exhaustion requirement if it is able to show that the agency clearly exceeded its statutory authority.” *Trinity Indus., Inc. v. Reich*, 901 F. Supp. 282, 286 (E.D. Ark. 1993) (citing *Philip Morris, Inc. v. Block*, 755 F.2d 368, 370 (4th Cir. 1985)). The issue before this Court is a matter

of law related to agency conduct in excess of the statute. Exhaustion is therefore not required; similarly situated courts have agreed.³

III. A TEMPORARY RESTRAINING ORDER IS APPROPRIATE.

A party seeking a TRO must establish the following elements: (1) likely success on the merits; (2) likely irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the seeking party's favor; and (4) an injunction is in the public interest. *Abay v. City of Denver*, 445 F. Supp. 3d 1286, 1291 (D. Colo. 2020). Here, these factors militate in favor of a TRO.

A. Likelihood of Irreparable Harm

Plaintiffs seeking preliminary relief must show that irreparable injury is likely in the absence of an injunction. *See Winter v. Nat. Res. Def. Council, Inc.*, 129 S. Ct. 365, 367 (2008). This Court and other federal courts “have long recognized that infringement of a constitutional right is an irreparable injury.” *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 942 (D. Colo. 2025). Indeed, “[f]reedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). Because “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,” the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). Immigration detention

³ *See Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Ermeo Sicha v. Bernal*, 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025).

is civil detention and must “bear a reasonable relation to the purpose for which the individual was committed” so that it remains “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (citation modified); *see also Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (stating that detention must be a proportional—not excessive—response to a legitimate state objective). Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690–91. To satisfy substantive due process under the Fifth Amendment, a noncitizen’s detention must be tied to flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690. Neither purpose is served by Petitioner’s detention, which means his imprisonment is quintessential irreparable harm.

Mr. Cherif has been detained without bond since May 28, 2025, despite his clear eligibility for a bond hearing under 8 U.S.C. § 1226(a)(2)(A). He was detained that day without a warrant, and DHS has offered no explanation for rescinding his prior OREC, which was granted in February 2024. That OREC necessarily reflected a determination that Mr. Cherif was neither a flight risk nor a danger to the community—findings that remain fully consistent with his conduct. Since his release in February 2024, he has appeared at all scheduled immigration hearings, *pro se*, and has committed no crimes as he built a life and ties to the community in Brooklyn Park, Minnesota. Nevertheless, Respondents have detained him without a warrant and without articulating any lawful basis for reversing their prior release determination.

Moreover, repeatedly transferring him away from his counsel compounds the constitutional harm. As one court has observed, forcing a petitioner to “litigate his case many states away from his lawyers would meaningfully deprive [him] of counsel’s ability to aid in his representation.” *Arostegui-Maldonado*, 794 F. Supp. 3d at 949 (internal quotation marks omitted).

Mr. Cherif's continued detention under these circumstances further undermines his meaningful access to counsel and to the courts.

Every day that Mr. Cherif remains in detention is a violation of his legal rights, including 8 U.S.C. § 1226(a)(2)(A) and his rights under the Fifth Amendment. *See, e.g., Arostegui-Maldonado*, 794 F. Supp. 3d at 942 (prolonged detention without constitutionally adequate bond hearing proved a continuing violation of procedural due process rights); *Feisal O. v. Noem*, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (concluding that the redetention of a person previously ordered released without any pre-redetention process violated the Due Process Clause). Immediate relief in the form of a TRO is warranted to halt ongoing harm and restore his liberty and his rights while his habeas and any removal proceedings are pending.

Additionally, Mr. Cherif will be harmed if Respondents are allowed to transfer him out of Colorado or without providing adequate advance notice to his attorneys of any movement out of the Aurora Contract Detention Center. Moving him would impede his habeas corpus and other legal rights, and without notice to him and his counsel will impede, if not completely prevent, Mr. Cherif's ability to speak with counsel, and will do so at a time when meaningful, frequent access to counsel is imperative. Not only is the matter at hand a fast-evolving one, but immigration enforcement at the national level changes every day, putting Mr. Cherif's legal rights in jeopardy. Mr. Cherif's access to the American justice system has already been severely curtailed by delays in setting his appeal, and by the federal government's frequent shuffling of Mr. Cherif across the country; it is therefore critical to prevent additional barriers to justice wherever possible. Were Mr. Cherif to be transferred yet again, his constitutional and legal rights, including under the Due Process Clause, would be further trampled and would sustain yet another round of irreparable harm.

B. Likelihood of Success on the Merits

The likelihood-of-success-on-the-merits and irreparable-harm factors are the most important considerations in deciding whether to grant a TRO. *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025). When a party seeks a “disfavored” injunction, as is the case here, this Court requires a “strong showing” of likelihood of success on the merits and irreparable harm. *Arostegui-Maldonado*, 794 F. Supp. 3d at 936. A “disfavored” injunction “may exhibit any of three characteristics: (1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win.” *Id.* (citation omitted). Whether the moving party has made a strong showing of likelihood of success on the merits is analyzed using the six *Singh* factors: (1) length of detention, (2) likely duration of future detention, (3) conditions of detention, (4) delays caused by the petitioner, (5) delays caused by the government, and (6) the likelihood of removal. *Arostegui-Maldonado*, 794 F. Supp. 3d at 938-42. Not all factors must weigh in favor of the petitioner for the court to conclude that the heightened standard for proving likelihood of success on the merits has been met. *Id.* at 942.

The first factor weighs in a petitioner’s favor where detention exceeds six months, and in fact becomes less reasonable the longer it continues. *Id.* at 939. Such is the case here, as Mr. Cherif has been detained in excess of six months.

The second factor considers whether, absent judicial relief, detention will continue for an indefinite period, including appeals. *Id.* This factor is likewise present here, as the government has yet to even afford Mr. Cherif the opportunity to present the merits of his case, let alone appeal any adverse determinations.

The third factor, conditions of detention, considers whether conditions are “meaningfully different from a penal institution for penal confinement.” *Id.* at 940. While the conditions of the Aurora Detention Facility have not yet been presented or addressed in this case, the court in *Arostegui-Maldonado* found mere months ago that that facility was in such an “abhorrent” state that this factor weighed “overwhelmingly” in favor of the petitioner.⁴ There is no indication that in the few short months since the *Arostegui-Maldonado* findings the government has cured the dire conditions at this facility. Therefore, like the petitioner in that case, this factor strongly weighs in Mr. Cherif’s favor.

The fourth factor, delays caused by the petitioner, considers whether the petitioner voluntarily initiated proceedings to continue his detention. *Id.* DHS has made no claim that Mr. Cherif has caused delays because he is responsible for none. The Petitioner timely filed his appeal of the immigration judge’s dismissal of his regular removal proceedings back in June 2025, and Petitioner has still not even received a briefing schedule for his appeal.

The fifth factor, delays by the government, considers whether “unnecessary delay attributable to an immigration judge (“IJ”) is the sort of careless or bad-faith mishap” which weighs in favor of the petitioner. *Id.* (internal cites omitted). Here, the government’s failure to timely set Mr. Cherif’s appeal, which has not even been set for a hearing date after more than eight months while Mr. Cherif is held indefinitely, is unnecessary, careless, bad-faith, or all three at once. As such, this factor also weighs in favor of Mr. Cherif.

⁴ The court concluded that the Aurora Detention Facility was like a penal detention facility because, among other reasons, detainees were only able to visit family behind glass and by telephone, 80 people lived in a 750--square-foot space, and detainees had limited access to medical care. *Id.* at 940.

Finally, likelihood of removal requires consideration of “the likelihood that the removal proceedings will result in a final order of removal.” *Singh v. Choate*, 2019 WL 3943960, *5 (D. Colo. Aug. 21, 2019). In *Arostegui-Maldonado*, a final removal order was not enough to weigh in favor of the government because there was a dissent in the BIA appeal that led the court to infer that the BIA at least found some merit in the petitioner’s claim for relief. *Id.* This dissent alone meant that this factor weighed in the petitioner’s favor. Because the immigration court here has not even had the opportunity to hear the merits of Mr. Cherif’s case, there is no indication that his removal proceedings will result in a final order of removal; at best, there is only uncertainty. All six of the *Singh* factors weigh in favor of Mr. Cherif. He has therefore made the required strong showing of a likelihood of success on the merits.

Beyond satisfying the *Singh* factors, Mr. Cherif—like other petitioners who have sought similar relief before this Court—can demonstrate a strong likelihood of success on the merits based on the language of 8 U.S.C. §§ 1226(a) and 1225(b)(2)(A), as well as this Court’s precedents interpreting those provisions. *See, e.g., Diallo v. Baltazar*, No. 1:25-CV-3548-SKC, 2026 WL 237296, at *1-2 (D. Colo. Jan. 29, 2026) (releasing a similarly situated petitioner who was initially detained and released by ICE in January 2024, then arrested and held in prolonged detention beginning in September 2025); *Aleman Hernandez v. Baltazar*, No. 1:25-CV-3688-SKC-SBP, 2025 WL 3718159, at *1 (granting a habeas petition for a similarly situated petitioner); *Mendoza Gutierrez*, 2025 WL 2962908, at *14 (releasing a similarly situated petitioner); *Barreno v. Baltazar*, No. 025-CV-03017-GPG-TPO, 2025 WL 3190936, at *4 (D. Colo. Nov. 14, 2025) (granting a habeas petition for a similarly situated petitioner and ordering a bond hearing with the burden on the government); *Garcia Cortez v. Noem*, No. 1:25-CV-02677-CNS, 2025 WL 2652880, at *5 (D. Colo. Sept. 16, 2025) (same).

Where § 1226(a) says an alien “*may* be arrested and detained pending decision” and therefore “indicates Congress’s intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant,” § 1225(b)(2)(A) only applies to noncitizens “seeking admission” and not those who have lived in the U.S. for years or a substantial period of time, such as Mr. Cherif. *Mendoza Gutierrez*, 2025 WL 2962908, at *7. This Court, like others listed below, has found that “when the Court reads the statutes side by side, the Court is further convinced that § 1225 was intended for noncitizens inspected upon entry to the United States or who have lived in the United States for less than two years, and § 1226(a) is intended for the apprehension and detention of aliens ‘already in the country.’” *Mendoza Gutierrez*, 2025 WL 2962908, at *7; *accord, e.g., Diallo*, 2026 WL 237296, at *2; *Aleman Hernandez*, 2025 WL 3718159, at *2-3. Other courts have issued favorable rulings on materially similar facts.⁵

⁵ See, e.g., *Belsai v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *A.A. v. Olson*, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Herrera Avila v. Bondi*, 25-cv-03741 (D. Minn. Oct. 21, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Hernandez Marcelo v. Trump*, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Chogollo Chafila v. Scott*, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Chang Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *Chanaguano Caiza v. Scott*, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept.

Recently, the U.S. Court of Appeals for the Fifth Circuit issued a contrary decision holding that all “applicants for admission” are necessarily “seeking admission,” a reading that would subject any noncitizen who has not been lawfully admitted to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). The Fifth Circuit’s analysis adopts a strained interpretation of the statutory text that, by its own acknowledgment, results in statutory surplusage, conflicts with more than 350 prior decisions granting habeas relief (including precedential decisions from this Court) and departs from the

26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Padron Covarubias, v. Vergara*, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *S.D.B.B. v. Johnson*, WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Mejia v. Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Contreras-Cervantes, v. Raycraft*, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Morales Chavez v. Director of Detroit Field Office*, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *Sanchez Alvarez v. Noem*, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Cordero Pelico v. Kaiser*, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Ortiz Donis v. Chestnut*, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Sabi Polo v. Chestnut*, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Cerritos Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cardin Alvarez v. Rivas*, 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Mendoza Guitierrez*, 2025 WL 2962908; *Aguilar Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).

government’s consistent application of immigration law over the past three decades. *Id.* at *3, 5, 8. The opinion is not only legally unsound, but also impractical and inconsistent with foundational constitutional principles, as its reasoning would permit the warrantless and prolonged detention of millions of individuals within the United States without due process. *See id.* at *10 (Douglas, J., dissent) (“Congress ... does not, one might say, hide elephants in mouseholes”) (internal citations omitted).

As such, Mr. Cherif is also likely to succeed on the merits of his claim that 8 U.S.C. § 1225(b)(2)(A) does not apply to him.

a. The Plain Text Illustrates that 8 U.S.C. § 1225(b)(2)(A) Cannot Apply Because Petitioner Was Not “Seeking Admission” When He Was Detained in May 2025.

8 U.S.C. § 1225(b)(2)’s text and structure illustrate that it is inapplicable here, more than two years after Mr. Cherif first arrived and entered the U.S. The Supreme Court has held that while “Section 1225(b) ‘authorizes the Government to detain certain aliens *seeking admission into the country*,’ Section 1226 ‘authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.’” *Gomes*, 2025 WL 1869299, at *2 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

“[W]e start where we always do: with the text of the statute.” *Van Buren v. United States*, 593 U.S. 374, 381 (2021). Critically, 8 U.S.C. § 1225(b)(2)’s qualifier “seeking admission” limits the class of aliens encompassed by the statute to those seeking entry into the U.S. from outside the country, either at the border or a port of entry. Accordingly, an “alien present in the United States who has not been admitted” is only subject to 8 U.S.C. § 1225(b)(2) if also “seeking admission.”

As the Supreme Court has held:

It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores **seeking admission** ... and **those who are within the United States after an entry, irrespective of its**

legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely “on the threshold of initial entry.”

Leng May Ma v. Barber, 357 U.S. 185, 187 (1958) (citing *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953)) (emphasis added). Having resided in the United States for over a year prior to his detention on May 28, 2025, Mr. Cherif was plainly beyond the threshold of initial entry when detained. In fact, Mr. Cherif has now been in the United States for more than two years.

Moreover, the term “admission” is statutorily defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). As always, “we start ... with the text of the statute,” *Van Buren*, 593 U.S. at 381. To be “seeking admission,” then, an alien must be seeking “lawful entry . . . into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). And, per long-held interpretations, “[t]he word ‘entry’ by its own force implies a coming from outside.” *U.S. ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

Mr. Cherif is not outside the U.S. and has not been out of the country in more than two years, nor was he arrested while entering the U.S. from outside the country. He is not currently seeking admission, nor was he when detained on May 28, 2025. Therefore, 8 U.S.C. § 1225(b)(2) cannot apply to him.

The remainder of the INA’s definition of “admission” reinforces the conclusion that “admission” contemplates entry from outside the country. The provisions concerning when a lawful permanent resident (“LPR”) will be treated as “seeking an admission” bear this out.

An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission ... unless the alien-

- (i) has abandoned or relinquished that status,

- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) has engaged in illegal activity after having departed the United States,
- (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
- (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
- (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

8 U.S.C. § 1101(a)(13)(C). Put succinctly, other than abandoning or relinquishing LPR status or committing specified offenses, 8 U.S.C. § 1225(b)(2) contemplates “seeking admission” to refer to an alien entering the U.S. from abroad. The provision applies only at and immediately around the border.

By contrast, aliens like Petitioner are not “seeking admission” when they are detained by ICE after having already been admitted into the country. While the Government may contend that they may be “applicants for admission” under 8 U.S.C. § 1225(a)(1), to “seek admission” they would need to present at a border or port of entry and request “admission into the United States.” 8 U.S.C. § 1181. Mr. Cherif did neither of these things when detained on May 28, 2025.

This interpretation is consistent with how Circuits have “construe[d] the meaning of the phrase ‘at the time of application for admission’” in the context of 8 U.S.C. § 1182(a)(7), which “refers to the particular point in time when a noncitizen submits an application to physically enter into the United States.” *Torres v. Barr*, 976 F.3d 918, 924 (9th Cir. 2020); *see also Marques v.*

Lynch, 834 F.3d 549, 561 (5th Cir. 2016) (quoting *Ortiz-Bouchet v. U.S. Atty. Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013)) (“Section 1182(a)(7) ‘only applies to applicants for admission and not to immigrants . . . who sought post-entry adjustment of status while already in the United States.’”). Just as an “application for admission” occurs at the moment an application is submitted, seeking admission occurs at the moment admission into the country is sought.

Mr. Cherif was detained over a year after entering the U.S., hundreds of miles from any border, including the land border where he initially entered the country. At the time of Mr. Cherif’s detention after the master calendar hearing at Fort Snelling on May 28, 2025, he was not, and still is not, seeking admission. Therefore, 8 U.S.C. § 1225(b)(2)(A) cannot apply here.⁶

b. Canons Against Surplusage Require Finding that Mr. Cherif Is Not Subject to 8 U.S.C. § 1225(b)(2).

Courts do not “adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.” *Republic of Sudan v. Harrison*, 587 U.S. 1, 12 (2019) (citation omitted). In fact, this “canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.” *City of Chicago v. Fulton*, 592 U.S. 154, 159 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)).

Interpreting 8 U.S.C. § 1225(b)(2) as Respondents do would have the Court render the entire Laken Riley Act (“LRA”) superfluous. In the LRA, Congress added language to 8 U.S.C. § 1226(c) directly referencing people who have entered the U.S. without inspection or who are present without authorization. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, an alien who “is inadmissible under paragraph (6)(A), (6)(C), or

⁶ *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) is owed no deference under *Loper Bright*, 603 U.S. at 369, and simply regurgitates the same tired arguments that have been rejected by at least 20 district courts throughout the country.

(7) of section 212(a) of this title; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person” is subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

If everyone inadmissible under 8 U.S.C. § 1182(a)(6)(A) is already subject to mandatory detention under 8 U.S.C. § 1225(b)(2), as Respondents contend, then there would be no need for the LRA at all, since those present without admission who commit crimes would not require a separate provision to mandate their detention. Such an interpretation would render an entire provision of the INA surplusage and run afoul of the maxim that “[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Pierce Cnty. v. Guillen*, 537 U.S. 129, 145 (2003). Mr. Cherif must therefore not be subject to 8 U.S.C. § 1225(b)(2).

c. The Government Relies on 8 U.S.C. § 1226, Not 8 U.S.C. § 1225(b)(2).

The government’s own reliance on § 1226(a) to release Mr. Cherif in February 2024 belies its current attempts to reverse course and claim that § 1225(b) mandates his detention. *See Mendoza Gutierrez*, 2025 WL 2962908, at *7 (government’s argument that § 1225(b)(2)(A) applies is weakened because petitioner was arrested pursuant to I-200 arrest warrant, which relies on § 1226(a)). Mr. Cherif was released on an OREC, which acknowledges that DHS originally apprehended—and then released Mr. Cherif—pursuant to “section 236 of the” INA [8 U.S.C. 1226]. *See Hab. Pet. at Ex. A.*

Here, Mr. Cherif was apprehended, without a warrant, in Minnesota more than a year after entering the United States, after the government had moved to dismiss his initial removal proceedings, and while he was peaceably residing in Brooklyn Park. At the time of his detention,

he was physically present within the geographic United States and had already voluntarily appeared for two hearings *pro se*. He was therefore not “seeking admission” within the meaning of § 1225. As this Court has recognized, “[c]ourts have given great weight to the manner in which DHS treated the petitioner in determining which detention statute applies.” *Mendoza Gutierrez*, 2025 WL 2962908, at 8 (citing *Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025)). When Mr. Cherif initially presented at the border in February 2024, he was briefly detained and then released into the United States pursuant to an OREC, consistent with detention authority under § 1226(a)—not mandatory detention under § 1225(b). DHS’s own actions therefore confirm that § 1226(a), not § 1225(b), governs his custody.

d. Applicable Precedent Cuts Decisively in Petitioner’s Favor.

Lastly, Mr. Cherif has presented caselaw demonstrating a strong likelihood of success on the merits. At least thirty decisions spanning courts in Colorado, Minnesota, Massachusetts, Louisiana, New York, California, and Arizona affirm Mr. Cherif’s interpretation of the law on similar facts. *Supra* § III.B. By contrast, Respondent’s anticipated interpretation relies primarily on a recent Fifth Circuit decision that adopts a strained reading of the statutory text, departs from longstanding practice, and stands in tension with the overwhelming weight of authority addressing this issue. In addition to the arguments presented in this motion, such a gap in supporting caselaw strongly supports Mr. Cherif’s position.

C. Relevant Hardships and Public Interest

“Where a plaintiff satisfies the threshold requirement for a preliminary injunction, courts weigh ‘the irreparable harm the moving party will endure if the preliminary injunction is wrongfully denied versus the irreparable harm to the nonmoving party if it is wrongfully granted.’” *Isserdasani v. Noem*, No. 25-CV-283-WMC, 2025 WL 1118626, at *5 (W.D. Wis. Apr. 15, 2025) (quoting *K.C. v. Individual Members of the Med. Licensing Bd.*, 121 F.4th 604, 632 (7th Cir.

2024)). The balance of the equities and the public interest factors merge when the federal government is the opposing party. *See Mendoza Gutierrez*, 2025 WL 2962908, at *9 (D. Colo. Oct. 17, 2025).

Courts have recognized that the public interest includes upholding constitutional safeguards, ensuring due process, and preventing unnecessary deprivation of liberty. *See, e.g., Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013); *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1158 (D. Minn. 2025) (rejecting government’s public-interest argument where detention rested solely on automatic stay without evidence); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025) (same). Accordingly, the government does not “enjoy an unfettered right to detain noncitizens in contravention of the law or in violation of the noncitizens’ Fifth Amendment rights.” *Mendoza Gutierrez*, 2025 WL 2962908, at *10. The public interest is not served by needlessly incarcerating a man with no criminal conviction in violation of law, and who voluntarily appeared *pro se* at his two immigration hearings. Also, “[e]nsuring compliance with a pre-existing requirement imposed by the Supreme Court and Constitution, without limiting any powers under an entirely different statutory regime that permits deportations and removals, does not rise to a level of ‘harm’ that outbalances the harm Petitioners face absent the issuance of a TRO in this case at this stage.” *D.B.U. v. Trump*, 779 F. Supp. 3d 1264, 1284 (D. Colo. 2025).

Granting Mr. Cherif’s TRO is fully consistent with the government’s ability to enforce its immigration laws. If the TRO is granted, DHS retains the ability to continue his removal case, monitor his compliance with conditions of release, and seek re-detention if circumstances change. In short, the government can enforce the law, and the Court can ensure that enforcement proceeds within constitutional bounds by ordering that the Respondents schedule and hold a bond hearing within seven days.

The harms to Mr. Cherif have been articulated, *supra*, and they are severe. By contrast, “[t]here is generally no public interest in the perpetuation of unlawful agency action.” *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025). Indeed, the federal interest in an action “minimal” where the plaintiff has illustrated a “strong likelihood of success in showing it exceeds agency authority.” *Id.* That being the case here, all factors favor the issuance of a TRO.

CONCLUSION AND REMEDY

The evidence compels the conclusion that Mr. Cherif, who has demonstrated a strong likelihood of success on the merits of his habeas petition, is suffering irreparable harm and will continue to suffer significantly and irreparably in the absence of a TRO. Therefore, a TRO must be granted to release Mr. Cherif from detention on the conditions of his February 18, 2024, OREC. *See, e.g., Diallo v. Baltazar*, 1:25-cv-3548-SKC, 2026 WL 237296, at *3 (D. Colo. Jan. 29, 2026) (immediately releasing similarly situated petitioner after concluding the warrantless arrest was also unlawful); *see also Mayamu K. v. Bondi, et al.*, No. 25-CV-03035-JWB-LIB, 2025 WL 3641819 at *8 (D. Minn. Oct. 20, 2025) (immediately releasing similarly situated petitioner under the conditions in petitioner’s OREC); *Fausto O.I. v. Noem, et al.*, No. 26-CV-854 (MJD/LIB), 2026 WL 357652, at *10 (D. Minn. Feb. 4, 2026) (same); *Aminata T. v. Bondi, et al.*, No. 26-CV-788 (JWB/DLM), at *8 (D. Minn. Jan. 30, 2026) (same). Mr. Cherif also requests that the Court enjoin Respondents from re-detaining him under the same statutory theory they raise in this proceeding absent materially changed circumstances. *See Fausto*, 2026 WL 357652 at *10.

If the Court declines to order Mr. Cherif’s immediate release, he respectfully requests a constitutionally adequate custody redetermination hearing within seven calendar days. At that hearing, he should not be treated as subject to mandatory detention under 8 U.S.C. § 1225(b), but rather as a detainee under 8 U.S.C. § 1226(a). Mr. Cherif further requests that the Court require the government to bear the burden of proving that he poses a flight risk or a danger to the

community. *L.G. v. Choate*, 744 F. Supp. 3d 1172 (D. Colo. 2024). Mr. Cherif has endured prolonged and indeterminate immigration detention in a facility already determined to have highly problematic conditions of confinement. In *L.G. v. Choate*, the court applied the *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing framework and held that, in cases involving prolonged immigration detention, the Fifth Amendment requires placing the burden on the government at a bond hearing to establish flight risk and danger to the community. *Choate*, 744 F. Supp. 3d at 1185.

Also, to protect his legal rights, Mr. Cherif requests that he not be removed from Colorado during the pendency of the resolution of his habeas corpus petition, and he and his counsel must be provided at least 72-hours' advance notice prior to any removal or movement out of the Denver Contract Detention Facility.

Finally, Petitioner also respectfully requests his attorneys' fees and costs for filing the TRO and habeas petition under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A). *Daley v. Ceja*, 158 F.4th 1152, 1155 (10th Cir. 2025).

Respectfully submitted February 18, 2026.

/s/ Perry L. Glantz

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 18, 2026, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served in accordance with the Federal Rules of Civil Procedure.

s/ Perry L. Glantz
Perry L. Glantz