UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

M.A.,

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, in his official capacity as warden of the Aurora Contract Detention Facility,

ROBERT HAGAN, in his official capacity as Field Office Director, Denver, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security;

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement,

PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents-Defendants.

Case No. 1:26-cv-00755

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioner-Plaintiff, M.A.,[1] by and through undersigned counsel ("Counsel"), hereby moves ex parte for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security ("DHS") and U.S. Immigration and Customs Enforcement ("ICE"), which includes Respondents-Defendants Juan Baltazar, Robert Hagan, Kristi Noem, Todd Lyons, and Pamela Bondi (collectively, the "government"), from continuing his unlawful detention or removing him from the District of Colorado.

This is an archetypal *Zadvydas* case. *Zadvydas v. Davis*, 533 U.S. 678 (2001). M.A., an Iranian citizen, fled his home in the face of certain and severe religious persecution. M.A. crossed the border from Mexico into California and submitted to DHS officers over eighteen months ago, on June 10, 2024, seeking fear-based protection against his deportation. M.A. has been detained ever since.

On February 26, 2025, an immigration judge ("IJ") granted withholding of removal, a special form of immigration protection that prevents ICE from removing a person to the country specified in the IJ's order based on a finding that it more likely than not that the person will face persecution. As a result, the IJ entered a final order of removal and simultaneously entered an order granting withholding of removal under Immigration and Nationality Act ("INA") § 241(b)(3), 8 U.S.C. § 1231(b)(3). Ex. 1-1 at 1 (IJ's final order). The government waived appeal of this decision. *Id.* at 4.

Nevertheless, almost a year later, M.A. remains detained in ICE custody. Both M.A. and prior counsel have repeatedly requested his release. Ex. 1-10 (April 1, 2025 email from counsel); Ex. 1-10 (April 15, 2025 email from counsel); Ex. 1-14 (September 19, 2025 email from counsel);

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[1] Petitioner will submit a motion for pseudonym upon conferring with counsel for defendants.

Ex. 1-12 (June 11, 2025 email from counsel); Ex. 1-13, 1-14 (September 2025 emails from counsel); Ex. 1-15 (October 31 and December 15, 2025 emails from counsel); *see also* Ex. 1-2, ¶ 15.

M.A. has a stable place to live in the United States. As Respondents have been informed, M.A. has made arrangements with Casa Marianella, a well-known non-profit that will help him integrate into a community, earn a living, and comply with any applicable immigration regulations. Ex. 1-8 11-14 (December 2024 email and letter from M.A.'s previous counsel requesting parole); Ex. 1-2, ¶ 13. Respondents received the email from M.A.'s prior counsel—and they responded with a denial pending the IJ's then upcoming review. Ex. 1-9.

In the nearly twelve months since the IJ's order, ICE instituted a third country removal policy in February 2025, initially transferring several noncitizens with withholding of removal and CAT grants to Guantanamo Bay in Cuba and the CECOT prison in El Salvador.[2] Since then, DHS has expanded the program to send people to additional third countries, including Panama, Costa Rica, Mexico, South Sudan, and Eswatini.[3] Most recently, Ghana accepted people deported from the United States, only to return some to their countries where their removal was prohibited under U.S. law due to the likelihood of future persecution or torture.[4]

For M.A., there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" (*Zadvydas*, 533 U.S. at 701):

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[2] *See* Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice at 16–21, *available at* 06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf.

[3] Kristina Cooke & Ted Hesson, *The US said it had no choice but to deport them to a third country. Then it sent them home*, REUTERS, Aug. 2, 2025, https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/.

[4] PBS News, *Immigrants deported from U.S. to Ghana are sent home, where lawyers say some could face torture*, Sep. 15, 2025, https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-where-lawyers-say-some-could-face-torture.

- M.A. cannot be sent to Iran, his only place of citizenship. Ex. 1-2, ¶ 1; Ex. 1-1 (IJ Order).
- In the nearly 12 months since the IJ's order, Respondents have identified no viable third country that will accept M.A. On information and belief, any country that has responded to alleged requests has refused. For example, in an email to M.A.'s counsel on June 12, 2025, Deportation Officer ("DO") Damian Morales claimed that Respondents had been "continuously seeking" countries, including Poland, Turkey, and Moldova. Ex. 1-12 (email from DO Morales). Poland and Turkey refused. *Id.* On information and belief, Moldova either never responded or refused. *Id.* No other third countries have been identified, and accepting Mr. Morales's representations as true, Respondents have failed despite continuous efforts. There is no evidence of, and no reason to believe that there is, a significant likelihood of M.A.'s removal in the reasonably foreseeable future.
- In the last six months, the only hint of an update M.A. has received regarding Respondents' purported removal attempts came on September 22, 2025, in an unofficial statement on generic plain white paper (without letterhead) that someone, presumably "DO - Knox," (which is typed at the bottom of the paper)—saying (Knox) had sent a "request for update of 3rd country removal" to someone else (no specific recipient was identified). Ex. 1-3; *see also* Ex. 1-2, ¶ 14. M.A. has received no update since. Ex. 1-2, ¶¶ 14–15.
- When M.A. and other people held in detention have requested updates, most of the time they do not receive any response; however, one officer told them that they

"never" will be released and that the government is "looking for a third country to deport you guys there." Ex. 1-2, ¶ 15.

The only basis Respondents have given M.A. for continued detainment after the IJ's order is a boilerplate decision dated May 2025 that M.A. has "not demonstrated that, if released, you will not [] pose a significant risk of flight pending your removal from the United States. Ex. D, at 1. But *Zadvydas* made clear that "**whether [a petitioner] is a flight risk has no bearing on the constitutionality of [their] continued detention**." *Ahrach v. Baltazar*, 2025 WL 3227529 at *5, (D. Colo. Nov. 19, 2025) (citing *Zadvydas*, 533 U.S. at 690) (emphasis added). Thus, even if M.A. *were* a flight risk (M.A. is not, *see infra*), "that fact does not permit [M.A.'s] continued detention where there is no evidence that removal is likely in the reasonably foreseeable future." *Id.*; *see also Zadvydas*, 533 U.S. at 690 ("[T]he first justification [for detainment]—preventing flight—is weak or nonexistent where removal seems a remote possibility at best.").

Moreover, Respondents continue to violate M.A.'s rights by ignoring their own regulations and forcing him to remain detained indefinitely without any meaningful due process reviews.

M.A. is therefore unlawfully and unconstitutionally incarcerated at the ICE Aurora Contract Detention Facility ("Aurora facility") in Aurora, Colorado, a prison privately owned and operated by Geo Group, Inc.

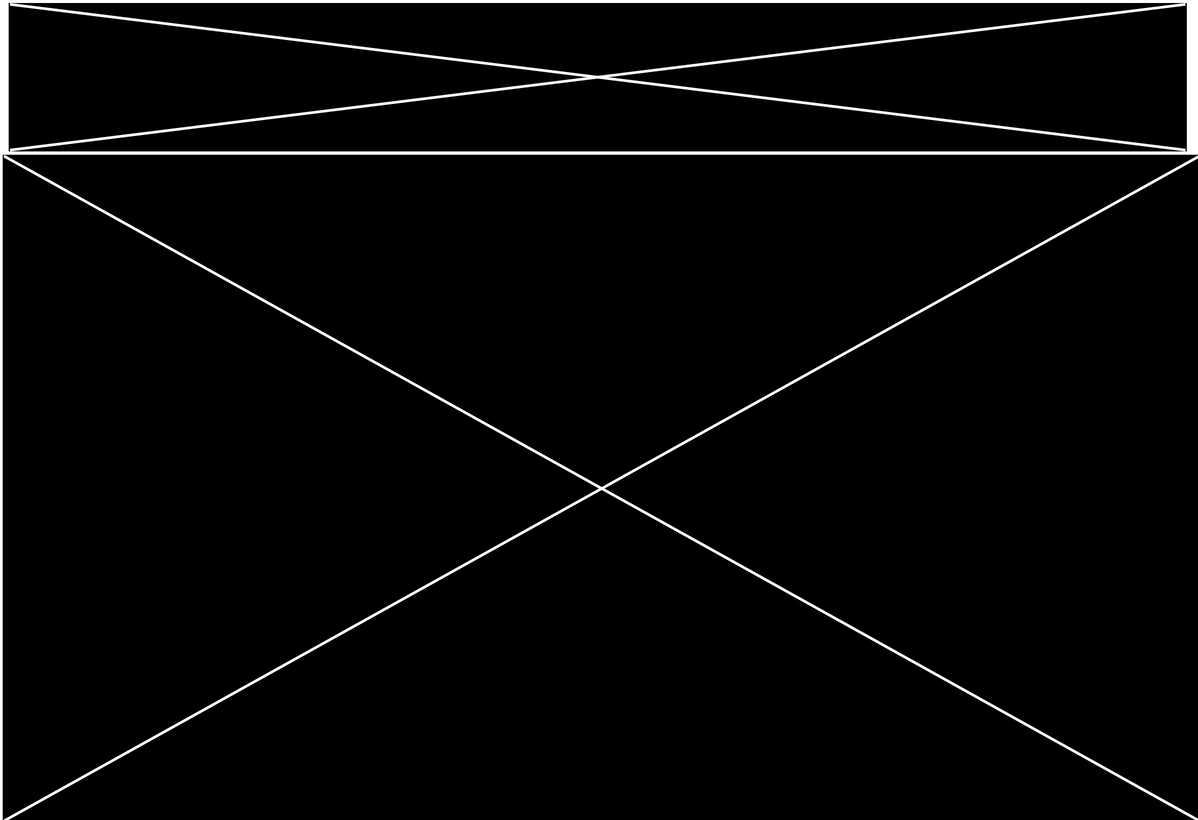
M.A.'s detention is unlawful, and his release is necessary because: (1) his continued detention violates 8 U.S.C. §§ 1231(a)(3), (a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Fifth Amendment's Due Process Clause, and the Administrative Procedure Act; (2) M.A. cannot be lawfully removed to a third country in the reasonably foreseeable future because he first must receive notice and a meaningful opportunity to present a claim for fear-based protection; and (3) ICE continues to subject M.A. to indefinite

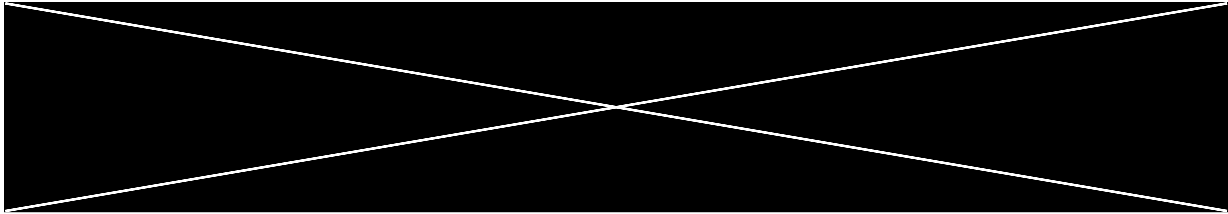
detention without adequate notice or process, in violation of agency rules and the U.S. Constitution.

M.A. easily satisfies the standard for a temporary restraining order and preliminary injunction. Absent an order from this Court enjoining the government from continuing his detention and transferring him out of this District, M.A. will suffer immediate and irreparable harm. Moreover, because ensuring that federal agencies comply with the U.S. Constitution, federal statutes, and governing regulations serves the public interest, both the balance of equities and the public interest weigh decisively in M.A.'s favor.

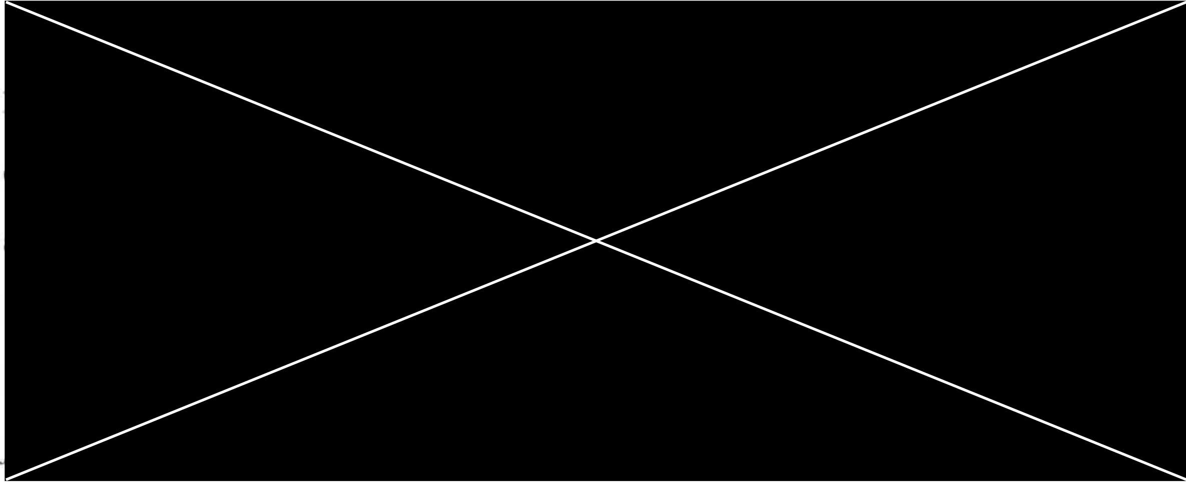
II. STATEMENT OF FACTS AND CASE

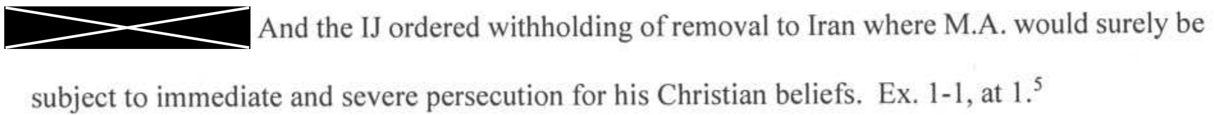
M.A. was born in Iran and, has never lived anywhere else. Ex. 1-2, at ¶ 1. M.A. was raised to [redacted]. *Id.* at ¶ 2. In 2023,





After a perilous journey, M.A. found his way to the United States to seek asylum. Ex. 1-5; *see also* Ex.1-2, ¶¶ 6, 8.



 And the IJ ordered withholding of removal to Iran where M.A. would surely be subject to immediate and severe persecution for his Christian beliefs. Ex. 1-1, at 1.[5]

Order of Removal, Withholding, and Post-Custody Events

M.A. entered the United States on or around June 10, 2024, and was immediately detained. Ex. 1-6, at 1; Ex. 1-2, ¶ 6. M.A. has no history of immigration violations and no criminal background. Ex. 1-2, at ¶ 10.

Respondents have detained M.A. for nearly two years with no end in sight, and have moved him multiple times, from California to Mississippi, from Mississippi to Wyoming, and from Wyoming to Colorado. Ex. 1-2, ¶ 9.

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[5] The IJ denied M.A.'s asylum application because under the Circumvention of Pathways final rule, he was not eligible for asylum due to his manner of entry into the United States. Instead, the IJ granted withholding of removal, recognizing that it was more likely than not M.A. would face persecution in Iran if deported there.

In December 2024, M.A., through counsel, requested pre-order parole. Ex. 1-8. In the letter, ICE was informed that Casa Marinella, a widely-respected non-profit organization, has pledged its sponsorship and to provide him with the support and resources necessary to ensure his compliance with future immigration proceedings. Ex. 1-8, at 4–5 (letter for release on parole); *see also* 11–14 (sponsor declaration). On January 15, 2023, ICE denied M.A.'s parole request pending a custody redetermination by an IJ. Ex. 1-9.

On February 26, 2025, an IJ granted M.A. protection based on his grave risk of future persecution in Iran. Ex. 1-1, at 1. Procedurally, the IJ first entered an order of removal that was then withheld—all within the scope of one order. *Id.*

In April 2025, prior counsel for M.A. requested that ICE release him pursuant to the IJ's order withholding removal. Ex. 1-10.

On May 16, 2025, ICE issued a decision to continue his detention. Ex. 1-4. The sole basis for continued detention was that M.A. has not demonstrated that he is not a flight risk. *Id.* at 1. There is no indication that Respondents made this determination based on facts obtained during any interview or considered facts contained in his written record, including consideration of the sponsorship with Casa Marinella. Instead, as other courts viewing similar decisions have found, this appears to be a generic, boilerplate report of determination, a pretext of review. *Misirbekov*, 796 F. Supp. 3d at 439 (S.D. Tex. 2025) (ordering removal before expiration of *Zadvydas* six-month period as a matter of procedural due process due to government's lack of meaningful and individualized review).

Upon handing M.A. the determination, a deportation officer told him that they were sending the decision to "HQ" (headquarters) to review and asked if he wanted an interview. Ex. 1-2, at ¶ 11. The officer told M.A. (who would require a translator) that an interview would not

be necessary to obtain release, and when framed in that way, M.A. declined the interview. *Id.* After receiving no updates about the status of his release despite multiple requests, M.A. requested an interview, but has not been provided one. *Id.* at ¶ 12.

In June 2025, prior counsel for M.A. reiterated these requests. Ex. 1-12. A DO indicated that they were looking for countries to accept M.A. but, as of that time, had only received rejections or no response at all from the third countries. Id.

Also in September 2025, as his English developed, M.A. informed an officer that he has been detained for many months despite removal to Iran being withheld. Ex. 1-2, at ¶ 14. In response, on September 22, 2025, the officer handed M.A. a piece of paper that said a request for an update on third country removal was sent, but it did not identify who the request was sent to or what it said. Ex. 1-3; *see also* Ex. 1-2, at ¶ 14. The paper bears no letterhead or signature. The paper identifies no third country and provides no information about the alleged request (who sent it, to whom, when, how it was delivered, etc.). The paper does not inform M.A. of his rights to challenge any attempt to remove him to a third country or his right to confer with counsel about any such attempt. And despite asking many times, M.A. has not received any update since receiving this paper. Ex. 1-2, ¶ 14.

In September, October, and December 2025, prior counsel for M.A. repeated requests for release, stressing that the continued detainment was affecting M.A.'s mental health. Exs. 1-13-1-15. On information and belief, Respondents provided no updates regarding the likelihood of removal or M.A.'s release.

Whenever M.A. has asked about release, officers do not give him a specific answer or even an estimated time for release. Ex, 1-2 at ¶ 15. Most of the time, M.A. gets no answer at all, but like other people also detained, M.A. has been told by officers that they "never" will be

released because the government is "looking for a third country to deport you guys there." *Id.*, ¶ 15.

Respondents have failed to identify any third country for removal despite having nearly 12 months having passed, M.A. has shown that there is no significant likelihood of removal in the reasonably foreseeable future. M.A.'s continued detainment is unlawful.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 65 authorizes courts to enter preliminary injunctions and issue temporary restraining orders ("TRO"). Fed. R. Civ. P. 65(a), (b). The Court exercises its discretion when deciding to issue a TRO. *Allen W. Hinkel Dry Goods Co. v. Wichison Indus. Gas Co.*, 64 F.2d 881, 884 (10th Cir. 1933). The procedure and standards for determining whether to issue a TRO mirror those for a preliminary injunction. Temporary restraining orders or preliminary injunctions are warranted when a party is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). The Tenth Circuit has stated that "a showing of probable irreparable harm is the single most important prerequisite" for a preliminary injunction or temporary restraining order, and "the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered." *Dominion Video Satellite v. Echostar Satellite Corp.*, 356 F.3d 1256, 1260–61 (10th Cir. 2004) (quotation and citation omitted).

IV. ARGUMENT

M.A. easily satisfies all four factors for a temporary restraining order and preliminary injunction. First, he continues to suffer irreparable harm because his detention is unconstitutional

and he continues to face the risk of unlawful removal to a third country where he may face persecution or torture. Second, M.A. is likely to succeed on the merits of his claim because his unlawful detention violates the Due Process Clause of the Fifth Amendment, relevant statutes, and regulations. Third, the balance of equities tips in his favor, as the ongoing injury outweighs any harm that the preliminary injunction may cause the government. Finally, the public interest favors requiring Respondents to follow the law.

A. M.A. will Suffer Irreparable Harm Absent Injunctive Relief.

M.A. will continue to suffer irreparable harm if his unlawful detention continues. The harm suffered is imminent and ongoing; it is "certain, great, and not theoretical." *Hiedman v. 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 1111, 1131 (10th Cir. 2003).

Each day M.A. remains detained in violation of his constitutional rights, he faces irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976); *Free the Nipple—Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805–06 (10th Cir. 2019) (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012)). The due process violation alone is sufficient to meet this standard.

M.A. is being held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). In fact, multiple courts in this District have recognized that ICE detention is "more akin to incarceration than civil confinement." *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024) (quoting *Daley v. Choate*, No. 22-CV-03043-RM, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023)). M.A.'s experience is no different. As the Supreme Court has explained, "[t]he time spent in jail . . . has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972). Here, M.A. is separated from his family and friends, deprived of the support and benefits of a religious

community, and unable to support himself or develop a sense of belonging within his community or through his profession as a butcher. This time in detention has taken a toll on M.A.'s mental health.

Furthermore, the government itself has documented alarming conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020–2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care people in detention received for suicide watch, and holding people in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[6] For nearly two years, M.A. has been subject to these very dire conditions.

A TRO or preliminary injunction is necessary to prevent M.A. from continuing to suffer such irreparable harm.

B. M.A. is Likely to Succeed on the Merits of His Claims.

M.A. has demonstrated a strong likelihood of success on the merits of Counts I–IV, each of which independently establishes that his continued post-final order detention violates § 1231(a)(6), the Fifth Amendment, DHS regulations, and the APA.

1. M.A. is Subject to Unlawful Post-Final Order Detention That Violates Fifth Amendment Due Process, 8 U.S.C. § 1231(a)(6), and *Zadvydas*.

M.A. is protected from indefinite detention by 8 U.S.C. § 1231(a) and Due Process, as recognized by The United States Supreme Court in *Zadvydas*. 533 U.S. at 690. M.A.'s order of

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[6] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed Feb. 10, 2026).

removal became final on February 26, 2025. Ex. 1-1. No country has been identified for removal. M.A.'s continued detention, nearly a year after the order, is not justified.

Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement outweighs an individual's "constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). Under *Zadvydas*, once a petitioner shows "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Aguilar*, 2025 WL 3514282, at *4.

M.A. easily satisfies this initial burden. He cannot be removed to Iran—the only country with which he has ties—without facing religious and political persecution. Courts have repeatedly held that a petitioner meets the *Zadvydas* burden by showing that a legal or factual impediment precludes removal to the country of origin. *Id.* (collecting cases).

Nor has the government shown any realistic prospect of third country removal. Over the last nearly twelve months, Respondents have provided no meaningful updates—only an informal note stating that a request for information was sent to an unidentified recipient. Ex. 1-2 ¶¶ 14–15; Ex. 1-3. Earlier, Respondents reported that two proposed countries had rejected their requests and that the third either had not responded or had also rejected removal. Ex. 1-12. Even assuming good faith efforts, the absence of any progress confirms that removal is not reasonably foreseeable. *See Nguyen v. Scott*, 796 F. Supp. 3d 703 (W.D. Wash. 2025); *Vaskanyan*, 2025 WL 3050075, at *3.

But even if Respondents were to now assert that a potential third country has been identified, such a representation would be insufficient. M.A. is entitled to robust procedural protections—including notice and an opportunity to present fear-based claims—before any third country removal may occur. *Ali v. Baltazar*, 2026 WL 322565, at *5. A last-minute designation

would violate the "basic tenet of constitutional due process" requiring notice and a meaningful opportunity to be heard. *Id.* (quoting *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999)); *see also Arostegui Maldonado v. Baltazar*, 2025 WL 2280357, at *13 (D. Colo. Aug. 8, 2025). The Supreme Court has reaffirmed that due process entitles noncitizens to "notice and an opportunity to challenge their removal" before deportation. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). DHS guidance likewise requires credible assurances against persecution or torture—and notice and an opportunity to raise fear-based claims in their absence. *Ahrach*, 2025 WL 3227529, at *5 n.10; *Nguyen*, 796 F. Supp. 3d at 728–29; *Chennah v. Baltazar*, 2026 WL 179951 (D. Colo. Jan. 23, 2026).

Because M.A.'s withholding order rests on fear-based claims, Respondents are independently required to provide notice of any proposed country of removal. 8 C.F.R. §§ 1240.10(f), 1240.11(c)(1)(i).

Having met his initial burden, the burden shifts to Respondents to rebut M.A.'s showing with evidence. *Izbitski v. Carnes*, 2026 WL 102974, at *8 (D. N.M. Jan. 14, 2026). They cannot do so. The record already demonstrates that Respondents lack evidence of where or when, if ever, M.A. can be removed. As courts have repeatedly held, "[d]iligent efforts alone will not support continued detention"; the government must show "legitimate progress toward removal." *Fadwa v. Lyons*, 2025 WL 3525026 (D. Colo. Dec. 9, 2025); see also *Ahrach*, 2025 WL 3227529, at *5; *Aguilar*, 2025 WL 3514282, at *6; *Vaskanyan*, 2025 WL 3050075, at *3; *Lorenzo v. Bondi*, 2026 WL 84521, at *5 (D.N.M. Jan. 12, 2026).

M.A.'s continued detention therefore violates 8 U.S.C. § 1231(a) and the Due Process Clause. Because removal is not reasonably foreseeable, the Court should order M.A.'s immediate release. *Morales-Fernandez v. INS*, 418 F.3d 1116, 1124 (10th Cir. 2008).

1. M.A.'s Detention is Unlawful under Due Process.

"The Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690.

Procedural due process "imposes constraints on governmental decisions which deprive individuals of liberty," including decisions to continue custody after a noncitizen has been ordered removed. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified); *see also Busto v. Lyons*, No. 25-CV-03143-TPO, 2025 WL 3520347, at *3 (D. Colo. Dec. 9, 2025) (granting a temporary restraining order and finding that "Petitioner is entitled to due process of law"); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024) (finding that "[c]ontinued detention of Petitioner requires an individualized bond hearing before an IJ to comport with due process.").

Here, M.A. is likely to succeed on his procedural due process claim because Respondents have detained M.A. for nearly one year after the IJ's withholding order, far beyond the ninety-day removal period and well past the presumptive six-month limit set in *Zadvydas*. To keep M.A. in detention, Respondents have relied on a boilerplate "failure to prove not a flight risk" finding, without claiming that he actually is a flight risk—only that he has not demonstrated otherwise. Ex. 1-4 at 1. But under *Zadvydas*, whether or if someone poses a flight risk has "no bearing on the constitutionality of [their] continued detention." *Ahrach*, 2025 WL 3227529 at *5.

Respondents' continued detention of M.A. violates Due Process under the *Mathews* factors. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). First, M.A. has a considerable private

interest, indeed, "the most elemental of liberty interests—the interest in being free from physical detention." *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

Second, M.A's continued detention demonstrates a high risk of erroneous deprivation. The government can only speculate that it may someday transfer M.A. to a third country, even though *Zadvydas* already established that the very justification for M.A.'s confinement—a flight-risk theory backed by no evidence—is "weak or nonexistent when removal seems a remote possibility." *Zadvydas*, 533 U.S. at 691. Respondents' current policy of requiring detained noncitizens to "prove a negative," that they are not a flight risk, only heightens the risk of erroneous deprivation of their Due Process rights. *Vizguerra-Ramirez v. Baltazar*, No. 25-CV-00881-NYW, 2025 WL 3653158, at *14 (D. Colo. Dec. 17, 2025).

Third, Respondents' interest in detention without affording M.A. additional process is low. The effort and cost required to provide him with "procedural safeguards is minimal." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025). Because any additional burden the government might face by providing M.A. with adequate process does not outweigh his significant liberty interest or risk of erroneous deprivation of liberty, the *Mathews* factors overwhelmingly favor M.A.

Finally, M.A.'s detention violates his substantive due process rights because a restraint on liberty is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997); *see also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process Clause] protects."). Petitioners cannot identify any legitimate, nonpunitive objective justifying M.A.'s continued detention.

In sum, M.A.'s continued detention violates Due Process and immediate release is required.

2. Violation of Administrative Procedure Act

Respondents violate the APA by disregarding their own regulations and failing to provide M.A. with meaningful notice or explanation for his continued detention. Under the *Accardi* doctrine, agencies must follow their own regulations, particularly where individual liberty is at stake. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings).

DHS regulations governing post removal detention are mandatory procedural safeguards, not internal housekeeping rules, and failure to follow them gives rise to a presumption of prejudice. *Santamaria Orellana v. Baker, No.* 25-1788-TDC, 2025 WL 2444087, at *13 (D. Md. Aug. 25, 2025) (quoting *United States v. Morgan*, 193 F.3d 252, 267 (4th Cir. 1999)) (discussing 8 C.F.R. § 241.4 generally).

Those regulations require timely post order custody reviews, written notice of any decision to continue detention, and a brief statement of reasons supporting continued custody. 8 C.F.R. §§ 241.4(d), (k). If detention continues beyond 90 days, ICE Headquarters must conduct a further review at or before 180 days, with advance notice and a written recommendation explaining the material factors considered. 8 C.F.R. §§ 241.4(c)(2), (i)(5), (k)(2)(ii).

Respondents have not complied. The sole written decision provided to M.A. contains boilerplate language asserting a failure to prove he is not a flight risk, without explanation or consideration of whether removal is reasonably foreseeable. Ex. D. There is no evidence that DHS conducted the required 180-day review—or any meaningful review—despite nearly a year of additional detention. Ex. 1-2 ¶ 12.

M.A. was never informed that his release depended on disproving flight risk, was denied an interview, and was given no opportunity to rebut that assumption or to have supporting evidence—such as confirmed sponsorship (which was previously provided)—considered. Ex. 1-2 ¶¶ 12–13, 16; Ex. 1-8, at 11-14.

Such failures render Respondents' actions arbitrary and capricious and "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Under the APA, a reviewing court should "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Here, Respondents' non-compliance with the process delineated by DHS regulation—8 C.F.R. §§ 241.4(c), (f), (h)(2), (i), (k)—has wrongly resulted in M.A.'s continued detention. Respondents have failed to provide M.A. with any reasons for the prolonged detention, thus depriving M.A. of the means to challenge it. *See Matthews*, 424 U.S. at 348 (1976) ("The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it."). "Detention beyond the removal period may be maintained only upon compliance with applicable process," which is contemplated by the regulations to be a "meaningful individualized review." *Misirbekov*, 796 F. Supp. 3d at 439 (finding deprivation of due process where respondent was late on post-order custody reviews and the reasons for detention were "boilerplate and pretextual"); *see also Arostegui Maldonado*, 2025 WL 2280357, at *13 (critiquing ICE officer's statement concluding, "Petitioner is a flight risk because he has been removed from the United States three times" when no further information was provided). By issuing a boilerplate decision to M.A. that lacks consideration of the unique facts of his case, Respondents violated M.A.'s procedural due process rights and the requirements of the Administrative Procedure Act.

Respondents also appear to construe 8 C.F.R. § 241.4(e) to make failure to prove not a flight risk dispositive, an interpretation that exceeds statutory authority and violates due process. 5 U.S.C. § 706(2)(B), (C). The statute mandates supervision after the removal period and permits continued detention only within constitutional bounds; *Zadvydas* expressly rejected flight risk, even if M.A. was a flight risk (which he is not), as a standalone justification where removal is not reasonably foreseeable. 533 U.S. at 691. DHS regulations cannot override the statute or the Due Process Clause.

Accordingly, M.A. has demonstrated a likelihood of success on the merits.

C. The Balance of Equities and Public Interest Weigh Heavily in M.A.'s Favor

The balance of hardships and the public interest both tip strongly in M.A.'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 assessing whether a TRO or preliminary injunction is warranted, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24.

The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice, and the public interest is best served by ensuring that constitutional rights and statutes are upheld. Federal legislative enactments, such as "democratic determinations of the public interest," offer useful guidance to courts analyzing the public interest prong of the preliminary injunction inquiry. *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) (quoting *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1191 (10th Cir. 2003)); *see also O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft*, 342 F.3d 1170, 1174 (10th Cir. 2003) (affirming a preliminary injunction because "failure to vindicate religious freedom protected under RFRA—a statute specifically enacted by Congress, as representative of the public ... —

would be adverse to the public interest"); *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."); *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *Andujo-Andujo v. Longshore*, 2014 WL 2781163 at *6 (D. Colo. June 19, 2014) (reasoning that ICE's "compliance with the law serves the public interest"). Therefore, the government cannot allege harm arising from having to comply with the Constitution, INA, or regulations. If a TRO or preliminary injunction is not entered, the government would effectively be granted permission to detain and deport M.A. in violation of law.

Further, any burden imposed by requiring DHS to refrain from detaining and deporting M.A. is both *de minimis* and clearly outweighed by the substantial harm he will suffer if he remains detained or is deported. *Rivero Busto v. Lyons*, No. 25-cv-03143-TPO (D. Colo. Dec. 9, 2025) (finding it "necessary to issue this temporary injunctive relief to prevent the imminent threat of irreparable harm" where "there appears to be no prejudice to Respondents"); *see also Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."). Courts granting temporary restraining orders in immigration habeas cases have routinely found that these factors weigh in a petitioner's favor. *See, e.g., Arostegui-Maldonado,* 2025 WL 2280357, at *10 ("True, there may be a generalized public interest in the enforcement of the country's immigration laws. But that cannot mean that Respondents enjoy an unfettered right to detain noncitizens in contravention with their Fifth Amendment rights."); *Pham v. Becerra,* No.

23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (noting the administrative burden of a bond hearing is minimal when weighed against a petitioner's severe hardships); *Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005, 1017 (C.D. Cal. 2020) ("the public interest benefits from a preliminary injunction that expedites a bond hearing to ensure that no individual is detained in violation of the Due Process Clause."). Therefore, the balance of equities and public interest both overwhelmingly favor granting a TRO or preliminary injunction requiring M.A. to be immediately released.

D. In the Alternative, M.A. Requests that Respondents be Enjoined from Transferring Him Out of This District While the Case is Pending.

If the Court does not order M.A.'s immediate release, he respectfully requests that, at a minimum, the Court enjoin Respondents from transferring him outside the District of Colorado—including removing him from the United States—during the pendency of his habeas proceeding.

Since his initial detention, Respondents have transferred M.A. multiple times. This pattern mirrors conduct this Court has already recognized frustrates jurisdiction. In a recent case, Respondents transferred a noncitizen from the Aurora Facility to an ICE facility in Arizona one day before she could file her habeas petition. *See Fuentes v. Choate*, 2024 WL 2978285 (D. Colo. June 13, 2024).

To preserve this Court's jurisdiction, ensure meaningful judicial review of M.A.'s significant constitutional and statutory claims, and avoid needless duplication of proceedings, the Court should enjoin Respondents from transferring M.A. outside this district during the pendency of this case.

CONCLUSION

For these reasons, this Court should grant a temporary restraining order and preliminary injunction ordering M.A.'s immediate release from unlawful detention, or in the alternative, at a

minimum, enjoining Respondents from transferring him from the District of Colorado and requiring his immediate return if a transfer has occurred.

Dated: February 23, 2026

/s/ Paul A. Williams
Paul A. Williams
Michelle E. Aspen
Brooke A. Churchman
Lindsey M. Knapton
1660 17th St., Suite 450
Denver, Colorado 80202
Telephone: (303) 285.5300
Email: pwilliams@shb.com
maspen@shb.com
bchurchman@shb.com
lknapton@shb.com

/s/ Laura Lunn
Laura Lunn
ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK
7301 N. Federal Blvd., Suite 300
Westminster, CO 80030
Telephone: (303) 433.2812
Email: llunn@rmian.org
shereld@rmian.org

Pro Bono Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Paul Williams, hereby certify that on February 23, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system, pursuant to Fed. R. Civ. P. 5 and provided a courtesy copy to:

Kevin.Traskos@usdoj.gov

/s/ Paul A. Williams