UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-XXXXXX

A.T.,

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, Warden, Aurora ICE Processing Center,

GEORGE VALDEZ, Acting Field Office Director, U.S. Immigration and Customs Enforcement,

MARKWAYNE MULLEN, Acting Secretary, U.S. Department of Homeland Security,

TODD LYONS, Acting Director of Immigration and Customs Enforcement,

PAMELA BONDI, U.S. Attorney General, U.S. Department of Justice,

In their official capacities,

Respondents-Defendants.

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

I. INTRODUCTION

Petitioner-Plaintiff, Ms. A.T., by and through undersigned counsel, hereby files this motion for a temporary restraining order to enjoin the U.S. Department of Homeland Security's ("DHS"), U.S. Immigration and Customs Enforcement ("ICE") from removing her from the District of Colorado or the United States. She also seeks a temporary injunction and/or preliminary injunction to enjoin Respondents from continuing her

unlawful detention. Ms. A.T. has requested Respondents' position on this Motion Respondents were unable to respond before time of filing.

As Courts in this District repeatedly confirm, the government cannot indefinitely detain noncitizens while they wait years for their immigration case to be resolved or other relief to be granted. *See, e.g., Martinez v. Ceja*, No. 24-CV03056-PAB, 2024 WL 5168143, at *7 (D. Colo. Dec. 19, 2024); *de Zarate v. Choate*, 23-cv-571- PAB, 2023 WL 2574370 (D. Colo. Mar. 20, 2023); *Daley v. Choate*, 22-cv-03043-RM; 2023 WL 2336052 (D. Colo. Jan. 6, 2023); *Viruel Arias v. Choate*, 22-cv-2238-CNS, 2022 WL 4467245 (D. Colo. Sept. 26, 2022); *Sheikh v. Choate*, 22-cv-1627-RMR, 2022 WL 17075894 (D. Colo. July 27, 2022); *Singh v. Garland*, 21-cv-0715-CMA, 2021 WL 2290712 (D. Colo. June 4, 2021); *Singh v. Choate*, 19-cv-0909-KLM, 2019 WL 3943960 (D. Colo. Aug. 21, 2019). And yet, Ms. A.T., a sex and labor trafficking survivor and mother of three, has survived detention in punitive confinement f**or 723 days** with no end in sight.

In order to preserve her rights, Ms. A.T. moves for an immediate decision on the temporary restraining order and preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65. As discussed *infra*, Respondents show a pattern and practice of transferring and deporting noncitizens immediately after being notified of filing of a habeas petition, in a clear attempt to defeat jurisdiction. Only four months ago, ICE attempted to illegally deport undersigned counsel's client immediately after she filed her habeas, and only counsels' emergency TRO prevented deportation. The client was already at the airport preparing to board the plane when the TRO was granted. *I.F.M. v. Baltazar*, No. 1:25-cv-03475-RMR, ECF No. 12 at 2 (D. Colo, Nov. 4, 2025); see also

Chennah v. Baltazar, No. 1:26-cv-0012-CNS (D. Colo. Jan. 23, 2026) (ICE attempted to third-country deport petitioner immediately after learning that a petition would be filed).

In the alternative, should the Court deny Ms. A.T.'s request for injunctive relief, at a minimum it should order Respondents to show cause within seven days establishing why Ms. A.T.'s habeas petition should not be granted.

II. FACTUAL BACKGROUND[1]

Ms. A.T. is a 34-year-old Honduran mother of three who was raised in a poor and abusive family. Index of Exhibits, ECF No. 1-2, Exh. J at 59. In 2014, Ms. A.T. was sold by her parents to an arms dealer. *Id.* For the next five years, Ms. A.T. lived locked in a house on his ranch, separate from her daughter, raped, physically abused, and threatened with murder on a daily basis. *Id.* Ms. A.T.'s sisters conspired to help her and her daughter escape – though they made her leave behind her young son. *Id.* She fled across the border in 2019 to live with her sister in the United States. *Id.* at 61.

Ms. A.T.'s sister immediately forced Ms. A.T. to work in a factory but took all of her checks. *Id.* For two and a half years, Ms. A.T. worked without pay, took care of the house, and was not allowed to leave on her own; her sister held the threat of her deportation over her head to maintain control. *Id.* In January 2022, Ms. A.T.'s sister threw Ms. A.T. and her daughter out on the street. *Id.* A friend found an apartment for her and shortly thereafter, she began a relationship with a man from her work. *Id.* at 63. However, in July 2022, police arrested Ms. A.T.'s partner for sexually abusing her

[1] Ms. A.T. incorporates the factual background included in her Petition for a Writ of Habeas Corpus (ECF No. 1), and the exhibits cited therein, and includes a summary of the most relevant facts below. All exhibits cited here are references to exhibits attached to Ms. A.T.'s petition.

daughter. *Id.* Custody of Ms. A.T.'s daughter was given to her sister, and Ms. A.T. was jailed on charges of neglect for failing to catch the abuse. *Id.* at 64. Ms. A.T. had to give up custody of her five-month-old son temporarily and has not seen him since. Restricted Habeas Exhibits, ECF No. 3, Exh. A at ¶ 7.

Ms. A.T. signed a plea deal, believing this would allow her to reunite with her children, and was sentenced to four years of parole with no attendant jail time. ECF No. 1-2, Exh. H at 48. The day she left jail, though, March 14, 2024, she was taken by ICE and incarcerated at the Aurora facility in Colorado. ECF No. 1-2, Exh. B at 8-9.

Ms. A.T. initially appeared *pro se* before the Aurora Immigration Court, in April 2024, at which time the Immigration Judge ("IJ") found her incompetent to represent herself and ordered appointment of a Qualified Representative ("QR") pursuant to the National Qualified Representative Program ("NQRP"). ECF No. 1-2, Exh. D at 13. With the assistance of counsel, Ms. A.T. submitted an I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). She also submitted a discretionary parole request to DHS, seeking release, which was denied. ECF No. 1-2, Exh. G at 30.

Ms. A.T. has two pending applications for immigration relief before two different agencies. First, Ms. A.T. has a pending application for T nonimmigrant status ("T visa") with U.S. Citizenship and Immigration Services ("USCIS") based on labor trafficking she experienced in the United States. ECF No. 1-2, Exh. C at 14. USCIS has sole jurisdiction over this application. Ms. A.T. received her Bona Fide Determination from USCIS on December 19, 2024, which grants her a stay of removal while USCIS adjudicates her T visa. *Id.*

Second, in proceedings before the Executive Office for Immigration Review ("EOIR"), Ms. A.T. argued for protection under CAT on July 10 and August 19, 2025. On September 8, 2025, the Immigration Judge denied her all protection. Ms. A.T. timely appealed the decision to the BIA on September 18, 2025. ECF No. 1-2, Exh. F at 23. She finally received her briefing schedule notice on February 4, 2026, nearly five months later. *Id.* at 26. On Nov. 13, 2025, Ms. A.T. submitted a second discretionary parole request to DHS, which was denied without explanation. Exh. G at 42-45.

Ms. A.T.'s prolonged detention has exacerbated her physical and mental health conditions. Ms. A.T. has been diagnosed with Complex Post-Traumatic Stress Disorder (C-PTSD) due to surviving decades of abuse—she scored a 71/80 on the PTSD checklist. Exh. G at 59. Continued detention compounds her symptoms, triggering insomnia, severe depression, suicidal ideation, flashbacks, hypervigilance, dissociation, and chronic stress. *Id.* at 74. She reports regularly feeling exhausted, anxious, and hopeless. Exh. A at ¶ 2. Her physical health has also declined: she has chronic headaches, dizziness, fatigue, fainting spells, chest pain, and significant gynecological problems, for which she has never received comprehensive treatment. *Id.* at ¶ ¶ 4-5.

Ms. A.T.'s greatest struggle is continued separation from her daughter and son. While fighting her immigration case, she simultaneously has fought to retain custody of her toddler son, while ensuring he has appropriate temporary guardians. *Id.* at ¶ 8. Her inability to see her children has dramatically harmed her mental health, and her dream of reunification is often the only reason Ms. A.T. continues to fight her case. *Id.* at ¶ 11.

Ms. A.T.'s prolonged detention—now exceeding 723 days—without an individualized bond hearing is unconstitutional. As detailed in Ms. A.T.'s

contemporaneously filed Petition for Writ of Habeas Corpus, she seeks judicial review of her unlawful detention. She is likely to succeed on the merits of her petition. Ms. A.T. requests this Court order her immediate release, or, in the alternative, that she be presented before a neutral adjudicator within seven days of this Court's order to determine whether her continued detention serves a legitimate purpose.

III. LEGAL STANDARD

A. Preliminary Injunction 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 whether 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. *See Emmis Commc'ns Corp. v. Media Strategies, Inc.*, 2001 WL 111229 at *2 (D. Colo. Jan. 23, 2001) (citation omitted).

A party seeking a TRO and preliminary injunction must show: (1) they are "likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary relief," and (3) "that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). The Tenth Circuit has held 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).

The Court has independent authority under the habeas corpus statute, 28 U.S.C. § 2241, to order the immediate release of detained persons from unconstitutional confinement. *See, e.g., Boutwell v. Keating,* 399 F.3d 1203, 1208-09 (10th Cir. 2005) (when an imprisoned person "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release ... his sole federal remedy is a writ of habeas corpus") (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)).

Courts in this district have previously found that they have authority under the All Writs Act, 28 U.S.C. s 1651(a) and Fed. R. Civ. P. 65(b) to enter orders enjoining removal of petitioners bringing habeas claims under § 2241 without awaiting response from Respondents – and routinely do so. *See, e.g., Arostegui-Maldonado v. Baltazar*, No. 1:25-cv-02205-WJM-STV, ECF No. 17 (D. Colo. July 21, 2025); *Vizguerra Ramirez v. Choate*, No. 1:25-cv-0081-NYW, ECF No. 11 (D. Colo. Mar. 21, 2025); *see also Batooie v. Ceja*, No. 25-CV-02059-DDD-STV, 2025 WL 1836695 *1-2 (D. Colo. July 3, 2025) (entering emergency ex parte TRO to enjoin removal of petitioner because "deportation without process could work irreparable harm and an order must issue without notice due to the urgency.").

IV. ARGUMENT

A. Ms. A.T. will Suffer Irreparable Harm Absent Injunctive Relief.

Ms. A.T. will suffer irreparable harm if her unlawful detention continues. The harm suffered is imminent and ongoing; it is "certain, great, actual and not theoretical."

Heideman v. South 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).

First, each day Ms. A.T. remains detained in violation of her constitutional rights, she faces irreparable harm. *Free the Nipple— Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019) (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012)). The due process violation alone, with no further showing of injury, is sufficient to meet this standard. *Id.*

Second, if Respondents deport Ms. A.T. notwithstanding her stay of removal, as they have done to other petitioners in recent months,[2] Ms. A.T. would face persecution and torture, and would lose her right to apply for a T visa. T visa applicants must remain in the United States to receive a visa, and deportation would irreparably harm Ms. A.T. by permanently depriving her of the opportunity to receive protection.

Third, Ms. A.T. suffers irreparable physical and mental harm due to her incarceration. 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. . .The time spent in jail is simply dead time." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); *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

[2] *See* discussion *infra,* Sec. IV(D)(b).

detention, and the collateral harms to children of [persons in detention] whose parents are detained").

Ms. A.T. experiences these harms more profoundly than other noncitizens because of how her disabilities manifest. She suffers from severe symptoms of C-PTSD, triggered particularly by detention because it is reminiscent of the five years she spent captive to an arms dealer. The retraumatization of prolonged detention exacerbates Ms. A.T.'s C-PTSD symptoms and her evaluating psychologist states that this "may diminish her capacity to recover even if treatment were to become available later." Exh. G at 79. Day to day, she experiences exhaustion, anxiety, depression, flashbacks, self-blame, hypervigilance, chronic stress, dissociation, insomnia, and isolation. *Id.* at 70, 75. When in a particularly bleak spiral, such as after she initially lost her immigration case, Ms. A.T. cannot get out of bed and hears voices telling her she does not deserve to live. Exh. A at ¶ 2.

Family separation also disproportionately harms Ms. A.T. and her children. Ms. A.T. has not seen her youngest son since he was five months old. *Id.* at ¶ 7. While fighting her own immigration case, she has also had to fight to retain custody of her son and daughter from half a country away, which has taken a profound toll on her mental health. *Id.* at ¶¶ 6-10. Finally, Ms. A.T. just lost her father, to whom she was never able to say a proper goodbye, and detention means grieving without any family support or ability to perform grief rituals. *Id.* at ¶ 6.

Underscoring her harm is the fact that Ms. A.T. is being held in "prison-like conditions."[3] *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). A brand-new report from this month describes the Aurora facility's "persistent failure to adequately treat [noncitizens'] health issues with medicine," "a proliferation of diagnoses for serious mental health conditions," "verbal and physical abuse by the guards," "extreme temperatures," and "forced labor."[4] The government itself has documented alarmingly poor 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).[5] The Aurora facility is notorious for deplorable conditions and systemic failures that jeopardize the health and safety of those in its custody and place detained persons like Ms. A.T. in danger of harm and

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[3] 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-citesconcernsdetainee-treatment-and-care.

[4] Kyle Harris, *Aurora ICE detainees are malnourished and forced to work, advocates report*, DENVERITE, (Mar. 02, 2026), https://denverite.com/2026/03/02/aurora-geo-immigration-jail-ice-conditions-report/.

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

death.[6] Conditions have only worsened, in Aurora and nationwide, due to mass immigration arrests under the current administration.[7]

Ms. A.T. has personally suffered the impact of the facility's substandard conditions. She has struggled from frequent and severe physical illness while in detention, including chronic headaches, dizziness, fatigue, fainting spells, and chest pain that resulted in her evacuation to a nearby emergency room but no diagnosis. ECF No. 1-2, Exh. K at 82-83. To this day, she does not understand what caused her to pass out and be rushed to an emergency room and she has not received any follow-up care related to this incident. Exh. A at ¶ 5. She has also experienced significant gynecological health problems such as severe cramping and excessive menstrual bleeding, which have been painful and difficult to manage in detention. ECF No. 1-2, Exh. L at 90. Respondents have never provided comprehensive treatment to address Ms. A.T.'s medical conditions. Exh. K at 82-84. Ms. A.T. is also being denied the appropriate psycho-social environment needed to not only avoid further trauma but to heal from past trauma tied to her captivity.

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[6] See, for example, investigations into the 2017 death of Kamyar Samimi due to "egregious violations of medical standards" and the 2022 death of Melvin Calero Mendoza following a medical emergency. Committee on Oversight and Reform and Subcommittee on Civil Rights and Civil Liberties,
U.S. House of Representatives Report at 15 (2020), *available at*:
https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf; Committee on Oversight and Reform and Subcommittee on Civil Rights and Civil Liberties,
U.S. House of Representatives Report at 15 (2020), *available at*:
https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf.

[7] Miriam Jordan and Jazmine Ulloa, *Concerns Grow over Dire Conditions in Immigrant Detention*, NEW YORK TIMES (July 1, 2025),
https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html.

A TRO or preliminary injunction is necessary to prevent Ms. A.T. from suffering further irreparable harm.

B. Ms. A.T. is Likely to Succeed on the Merits of Her Claims

The appropriate standard by which to assess this prong is a "reasonable likelihood" of success and nothing more. *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016); *e.g. Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc) (internal quotation marks omitted) ("[L]ikelihood of success on the merits" means that a plaintiff has "a reasonable chance, or probability, of winning . . . A 'likelihood' does not mean more likely than not.").

a. *Ms. A.T.'s detention violates the Administrative Procedures Act and the* Accardi *Doctrine.*

Ms. A.T. is likely to succeed on her Administrative Procedures Act ("APA") claim because her continued detention after receiving a Bona Fide Determination ("BFD") and stay of removal is arbitrary and capricious. Because ICE and USCIS are both sub-components of DHS, ICE's decision to continue to detain Ms. A.T. and seek her removal while she has a stay of removal granted by USCIS creates contradictory, opposing positions from the same agency – positions which DHS has failed to explain or reconcile. ICE has aggressively pursued Ms. A.T.'s continued detention and removal despite multiple requests for release, (Exh. G), which flies in the face of DHS's position that "[i]ssuing NTAs to survivors of trafficking. . .undermines both the humanitarian and law enforcement purposes of the statute," and "[a]s a matter of policy, DHS generally will not remove applicants with pending T nonimmigrant status applications." "Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for 'T' Nonimmigrant Status," www.federalregister.gov/d/2016-29900/p-222 at 34889; 34875.

Because Respondents' continued detention of Ms. A.T. unjustifiably undermines the purpose of her grant of deferred action, she is likely to succeed in her APA claim.

b. *Ms. A.T.'s detention violates procedural due process because it is unconstitutionally prolonged.*

Ms. A.T. is likely to succeed on her procedural due process claim because her detention has become unconstitutionally prolonged and the circumstances of her case are even more egregious than similar cases in which this Court has granted relief.

The three-prong balancing test set forth in *Mathews v. Elridge*, 424 U.S. 319 (1976), heavily favors Ms. A.T. Her private interest "is the most significant liberty interest there is" and her near two-year detention heightens her liberty interest. *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019 WL 2774211, at *10 (D. Colo. July 2, 2019). Ms. A.T. is at significant risk of erroneous deprivation of her liberty interest because she has already been detained nearly two years without individualized review by a neutral adjudicator. Respondents have violated their own policy requiring she receive a custody review every six months, and there is no evidence that any custody review will ever be provided. ECF No. 1 at ¶ 24. Finally, Respondents face little burden to add procedural protections ensuring due process, as the majority of noncitizens appear on the non-detained docket, and the cost of releasing Ms. A.T. is far lower than the cost of continuing to detain her.[8] Moreover, "the public has a strong interest in

[8] ICE Alternatives to Detention (last updated Jan. 7, 2026), https://www.ice.gov/features/atd (noting that Alternatives to detention cost less than $4.20 per person per day, "a stark contrast from the cost of detention" at around $152 per person per day).

upholding procedural protections against unlawful detention." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1037 (N.D. Cal. 2025).

Under the six-factor *Singh* test by which this Court often analyzes prolonged detention, Ms. A.T.'s detention has also become unconstitutional. *Martinez v. Ceja*, No. 24-CV-03056-PAB, 2024 WL 5168143, at *5 (D. Colo. Dec. 19, 2024).

1) ICE has detained her nearly 2 years, many months longer than other cases in which this Court has granted habeas relief. *See, e.g., Daley*, *Daley v. Choate*, No. 22-cv-03043-RM, 2023 WL 2336052 (D. Colo. Jan. 6, 2023) (fourteen months); *Viruel Arias v. Choate*, 22-cv-2238-CNS, 2022 WL 4467245 at *2 (D. Colo. Sept. 26, 2022) (fourteen months); *Sheikh v. Choate*, 22-cv-1627- RMR, 2022 WL 17075894 at*3 (D. Colo. July 27, 2022) (thirteen months).
2) Ms. A.T.'s detention is likely to continue for years as she pursues appeal of her removal case and awaits adjudication of her T visa. ECF No. 1 at ¶¶ 88-91. Because she has a stay of removal to any country, even if she loses her removal proceedings, she will be detained through adjudication of her T visa—a minimum of 2.25 years—unless this Court intervenes. *Id.*
3) Third, this Court has already held that the Aurora facility where Ms. A.T. is incarcerated is akin to a penal institution. *Martinez*, 2024 WL 5168143, at *5 (finding "the Aurora facility is more akin to incarceration than a civil confinement"); *Daley*, 2023 WL 2336052 at *4 (detailing poor conditions at the Aurora facility and noting that Respondents did not dispute these conditions); *Viruel Arias*, 2022 WL 4467245 at *2 (determining Respondents provided

insufficient evidence "to explain how the conditions of [petitioner's] confinement differ from the conditions of penal confinement").

4) Ms. A.T. has diligently litigated her case and not engaged in dilatory tactics. *Martinez*, 2024 WL 5168143, at *6 (D. Colo. Dec. 19, 2024) (recognizing that appeals are not dilatory tactics because "the Court will not hold [Petitioner's] efforts to seek relief through the available legal channels against him.").
5) Respondents have prolonged Ms. A.T.'s detention through delays in adjudicating her immigration case and appeal, and causing the multi-year waiting period for her T visa. ECF No. 1 at ¶ 98.
6) Ms. A.T.'s removal from the United States is unlikely, both because she is pursuing meritorious appeal and because of the high grant rates of T visas. ECF No. 1 at ¶ 100.

By either the *Mathews* or the *Singh* analysis, Ms. A.T. is likely to succeed on her claim that her detention has become unconstitutionally prolonged.

c. *Ms. A.T.'s detention violates substantive due process because her detention has no legitimate, nonpunitive objective.*

Ms. A.T. is likely to succeed on her substantive due process claim because her detention serves no legitimate objective and is punitive. A restraint on liberty like ongoing confinement is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). Here, Ms. A.T.'s detention serves no objective and instead contravenes Congressional intent and DHS's own policy meant to protect survivors of human trafficking.

Congress created T visas to protect survivors of trafficking and DHS created regulations intending to permit survivors to obtain certain "stabilizing benefits" through

receipt of a BFD. Eligibility for "T" Nonimmigrant Status, 89 Fed. Reg. 34875 (April 30, 2024). In granting the BFD, DHS determined that Ms. A.T. is not a public danger and gave her a stay of removal and deferred action, removing any concern of flight risk. ECF No. 1 at ¶¶ 104-105. Thus, DHS cannot justify Ms. A.T.'s detention on either basis and has no legitimate grounds for keeping her incarcerated.

Ms. A.T.'s receipt of a BFD, deferred action, and stay of removal from one agency of DHS cannot be squared with her detention by another agency of DHS. Indeed, in a recent, analogous case, *Alfaro Herrera v. Baltazar*, this Court held that detention of a petitioner with Special Immigrant Juvenile Status violated substantive due process because 1) the protections inherent in that status undermined the validity of his underlying removal, and 2) the status "underscore[d] the illegitimacy of Petitioner's detention." No. 1:25-CV-04014-CNS, 2026 WL 91470, at 9 (D. Colo Jan. 13, 2026). Here, Ms. A.T. is identically situated: she cannot be removed, so her stay of removal and deferred action status undermine the legitimacy of her detention pursuant to removal. Because Ms. A.T.'s arbitrarily prolonged detention is thus punitive, she is likely to win her substantive due process claim.

C. The Balance of Equities and Public Interest Weigh Heavily in Ms. A.T.'s Favor.

The balance of hardships and the public interest both tip strongly in Ms. A.T.'s favor. Where, as here, the government is a party to a case, the final two injunction factors—*i.e.*, the harm to the opposing party 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 v. Nat Res. Def. Council, Inc.*, 555 U.S. 24, 129 S. Ct. 365, 367, 172 L. Ed. 2d 249 (2008).

Here, the balance of harms and public interest weigh heavily in Ms. A.T.'s favor. "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. Indeed, courts granting temporary restraining orders in immigration habeas cases have routinely found that these factors weigh in a petitioner's favor. *See, e.g., Pham v. Becerra*, 717 F. Supp. 3d 877, 887 (N.D. Cal. 2024) (noting the government interest in detention without a bond hearing is minimal when weighed against a petitioner's liberty interest); *Zhang v. Barr*, 612 F. Supp. 3d 1005, 1017 (C.D. Cal. 2020) ("[I]t stands to reason that 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."). In this case, the most important factor in the balance is Ms. A.T.'s profound liberty interest—further heightened after nearly two years in detention.

Respondents will not be harmed by releasing Ms. A.T. 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. *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."). ICE's "compliance with the law serves the public interest," *Andujo-Andujo v. Longshore*, 2014 WL 2781163 at *6 (D. Colo. June 19, 2014), so the government cannot allege harm arising from having to comply with the

Constitution, INA, or regulations. Respondents also do not "enjoy an unfettered right to detain noncitizens in contravention of the law or in violation of the noncitizens' Fifth Amendment rights." *Mendoza Guitierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908, at *10 (D. Colo. Oct 17, 2025).

Further, any burden imposed by requiring DHS to refrain from detaining and deporting Ms. A.T. is de minimis and clearly outweighed by the substantial harm she will suffer if she continues to be detained or is deported. *See 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., Arosteguí-Maldonado v. Baltazar*, 794 F. Supp. 3d. 926, 943 (D. Colo. 2025) ("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*, 717 F. Supp. 3d at 887; Zhang, 612 F. Supp. 3d at 1005. Therefore, the balance of equities and public interest both overwhelmingly favor granting a TRO or preliminary injunction requiring Ms. A.T. to be immediately released.

D. In the Alternative, Ms. A.T. Requests that Respondents be Immediately Enjoined from Transferring Her Out of This District While the Case is Pending.

If the Court does not order Ms. A.T. immediately released, she respectfully requests a narrowly tailored order enjoining Respondents from removing her from the District of Colorado and the United States – during the pendency of her underlying

habeas case. Ms. A.T. would be immediately and irreparably harmed by such actions. Further, because ICE removes habeas petitioners rapidly and without warning, this harm could occur before the Court has a chance to hold a preliminary injunction hearing.

a. Ms. A.T. Will Be Irreparably Harmed if Removed from the District of Colorado and/or the United States

Ms. A.T. is at risk of irreparable harm because removal threatens her physical safety, as well as her ability to pursue a T visa and continue to litigate this case. First, if Respondents deport Ms. A.T. to Honduras, she will most likely be kidnapped again by her former trafficker, who keeps close tabs on her immigration case, and either murdered outright or held in captivity and tortured.

Second, if Ms. A.T. is removed from the United States, she will no longer be eligible to receive a T visa for victims of trafficking. ECF No. 1 at ¶ 57. She has already applied for the T visa and received a Bona Fide Determination that grants her a stay of removal until her visa is adjudication – issued to ensure she remains eligible for her T visa until adjudication. Removing Ms. A.T. would violate this stay and render her ineligible for a form of relief she is highly likely to receive. ECF No. 1 at ¶ 100.

Third, if Respondents deport Ms. A.T. before the court can enter an order enjoining removal, this may moot this court's jurisdiction and allow the government to evade judicial review of her serious constitutional and statutory claims. Indeed, recent cases show a recurring sequence wherein DHS unlawfully deports a habeas petitioner and then seeks to dismiss the case for lack of jurisdiction. *See Reyes Vasquez v. Noem*, No. 2:25-CV-01146-JNP, 2026 WL 309631, at *4 (D. Utah Feb. 5, 2026) ("Respondents' argument appears to ask the court to sanction a strategy in which ICE and the

Government are able to wash their hands of a case and destroy a court's subject matter jurisdiction as long as they shuttle a petitioner out of the country, even if that removal is in violation of a court order."); *Pablo Pablo v. Lyons,* No. EP-25-CV-00566-DCG, 2025 WL 3684305, *2 (W.D. Tex. Dec. 5, 2025) ("Respondents previously suggested that because they no longer 'have actual custody or control over Petitioner,' this Court 'lacks jurisdiction in the habeas framework' to order Pablo Pablo's return to the United States.").

Third, transfer out of the District of Colorado would hinder Ms. A.T.'s ability to work with her appointed pro bono counsel, who is based in Denver. An immigration judge has deemed Ms. A.T. incompetent to represent herself, and she is diagnosed with cognitive disabilities and Complex PTSD. Due to these disabilities, Ms. A.T. cannot effectively work with counsel remotely but requires in person meetings to proceed with her habeas case, pending appeal before the BIA, T visa application, and any future immigration proceedings.

Fourth, Ms. A.T. already experiences chronic stress and hypervigilance, which would be exacerbated by any sudden change of environment and removal of Ms. A.T. from the social worker and attorney who visit her regularly and are her only in-person social support. Ex. J, at 78; Ex. A, at 13. Transfer or removal would likely mean intensified psychological symptoms such as insomnia, self-harm, and suicidal ideation, all of which will impede Ms. A.T.'s work with counsel and harm her significantly. *Id.*

Finally, transfers out of the district would complicate and delay resolution of this case and compound Ms. A.T.'s injury by extending her already unconstitutionally prolonged detention. ICE's arbitrary transfer of habeas petitioners impedes the court's

ability to adjudicate a case at every stage. *See, e.g. Espinoza Cruz v. Eng.*, No. 3:25-CV-919-CCB-SJF, 2025 WL 3469811, *4 (N.D. Ind. Dec. 3, 2025) (Noting that petitioner has been transferred multiple times since filing his habeas petition, "presumably in anticipation of immediate removal from the United States . . . [and] counsel are currently unaware of his current location and counsel for Respondents were [also] unable to confirm [petitioner's] current location.")); *Gallardo v. Noem*, No. 0:26-CV-720, 2026 WL 272427, *1-2 (D. Minn. Feb. 2, 2026) (expressing frustration when DHS moved to transfer the case to Texas, the court granted motion, and the DHS immediately transferred the petitioner back to Minnesota); *Gonzalez Garcia v. De Anda-Ybarra*, EP-26-cv-156-KC, ECF No. 8, at 3 (W. D. Tex. Feb 6, 2026) (petitioner could not attend court-ordered bond hearing because the government had already transferred him out of the District in violation of the court's order); *Minarcaja Concha v. Lyons*, No. 2:25-CV-6695 (NJC), 2026 WL 307170, at *6 (E.D.N.Y. Feb. 4, 2026) ("closer inquiry of the record raises serious questions about whether Respondents intended to violate this Court's Orders . . by putting [Petitioner] on a flight from New Jersey to Texas just days before the December 12, 2025, hearing before this Court").

b. The Risk of Removal and/or Transfer is Imminent and Could be Triggered by the Filing of Ms. A.T.'s Habeas Petition

As detailed below, Ms. A.T. risks immediate and irreparable injury, given widespread evidence that Respondents are rapidly transferring and/or deporting noncitizens after they file a habeas petition—often in direct violation of court orders.

Recently, undersigned counsel represented a client whom ICE tried to deport to Mexico four days after she filed a habeas petition. *I.F.M. v. Baltazar*, No. 1:25-cv-03475-RMR, ECF No. 12 at 2. Counsel learned of the planned removal only an hour or two

before it was to take place. *Id.* The petitioner could not notify counsel of her impending removal, nor were counsel permitted to speak with her. *Id.* Thanks to an emergency petition to the court, petitioner was pulled off the bus at the airport and returned to the Aurora facility. *Id.*

This petitioner's experience was not an anomaly. In recent months, ICE has a recurring practice of deporting and/or transferring people during or immediately before habeas proceedings. Judge Frank, describes a "pattern of obfuscation" where "[i]n many cases, ICE is working to quickly transport [detained people] out of [the state], creating significant hardship on their families and counsel . . . [t]hese practices are deeply concerning and generally suggest that ICE is attempting to hide the location of [people in its custody], thus making habeas proceedings more difficult for petitioner and their counsel." *Jonnathan X.D.B. v. Noem*, No. CV 26-588 (DWF/DJF), 2026 WL 222189, * (D. Minn. Jan. 28, 2026).

ICE deports people after they file habeas petitions even when—like Ms. A.T.—these individuals have been granted protection from removal by the immigration court. In *Pablo Pablo v. Lyons*, the petitioner was deported to Guatemala shortly after he filed his habeas petition, despite having previously been granted withholding of removal to that country under the CAT. No. EP-25-CV-00566-DCG at *2; *see also Valle Vargas v. De Anda-Ybara*, No. 2026 WL 63932, *2 (D.N.M., Jan 8, 2026) (Petitioner deported to Mexico notwithstanding the stay of removal in place from the BIA).[9]

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[9] Even after the district court enters an order prohibiting removal of a petitioner, ICE has frequently violated such orders. *See, e.g., Chavero v. Bondi*, No. EP-25-CV-00638-DB, 2025 WL 3679768, *5 (W.D. Tex. Dec. 18, 2025) (citing multiple instances where petitioners were removed after the court issued an order preventing removal); *Dcosta v. Warden of Immigr. Det. Facility*, No. 4:25-CV-06177, 2026 WL 74187, * 3 (S.D. Tex. Jan.

Ms. A.T. and her counsel thus rightfully fear that filing her habeas will trigger an immediate effort to transfer or illegally deport her.

a. The Balance of Equities Weigh in Favor of Granting an Ex Parte TRO Enjoining Ms. A.T.'s Removal and/or Transfer

As discussed *supra*, Ms. A.T. has strong claims that her detention violates her constitutional rights and the APA. Beyond that, the balance of equities and the public interest in enjoining her removal or transfer also weigh heavily in Ms. A.T.'s favor.

The government cannot suffer harm from an injunction that prevents it from deporting a person like Ms. A.T., who—with stays of removal from both the BIA and USCIS—cannot lawfully *be* deported. Moreover, as Respondents have maintained Ms. A.T. at the Aurora Facility for the past 23 months, they will not suffer any hardship by keeping her in this facility and avoiding transfer for the limited additional time it takes to

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9, 2026) ("[T]he Court is nonetheless disturbed by the apparent communication failures [within DHS] that allowed Petitioner to be removed [to India] in violation of a Court order entered almost four hours earlier and of which the relevant government agencies had notice."); *Reyes Vasquez v. Noem*, No. 2:25-CV-01146-JNP, 2026 WL 309631, *4 (D. Utah Feb. 5, 2026) (petitioner deported to Mexico in violation of TRO enjoining removal); *Lopez Belloza v. Hyde*, No. CV 25-13499-RGS, 2026 WL 407953. *2 (D. Mass. Feb. 13, 2026) ("Respondents have readily acknowledged that they violated the Emergency Judge's order staying removal when they removed [petitioner] from the United States [to Honduras]"); *Kumar v. Soto*, No. 26-CV-00777(MEF)(AME), ECF No. 21-1, Declaration of Jordan Fox (D.N.J. Feb. 13, 2026) ("ICE aware of injunction but erroneously removed Petitioner to Peru.").

Respondents have also been violating district court orders prohibiting them from transferring a petitioner out of the district where the habeas is pending. *Gutierrez Montalvan v. Bondi*, No. 0:26-cv-00587, (D. Minn. Jan. 24, 2026), ECF. No. 6, ECF No. 10; *Velasco Hurtado v. Bondi*, No. 0:26-CV-546, 2026 WL 184884, *6 (D. Minn. Jan. 24, 2026); Order re: Mot. To Enforce Judgment at 3, *Gonzalez Garcia v. De Anda-Ybarra et al.,* No. EP-26-CV-156-KC, (W. D. Tex. Feb. 6, 2026) ECF No. 8; *Otabek K.R, v. Bondi*, No. 26-955 (DWF/DJF), 2026 WL 323393, *1 n.1 (D. Minn. Feb. 6, 2026).

complete her habeas litigation. The public interest is served by conserving judicial resources. Prohibiting Respondents from unlawfully deporting Ms. A.T. or arbitrarily transferring her to another district, which would result in additional and unnecessary litigation, supports this goal. Ms. A.T.'s interest in maintaining access to her legal counsel and eligibility of her potential T visa far outweigh the nonexistent burden on the government to retain her presence at the Aurora facility.

Issuance of a brief ex parte temporary restraining order will not prejudice Respondents. *See Arostegui-Maldonado*, 2025 WL 2051751 at *2 (granting ex parte TRO enjoining petitioner's removal or transfer and "emphasiz[ing] that there appears at this time to be no prejudice to the government by temporarily maintaining the status quo"). The requested relief is narrowly tailored, time-limited, and preserves the status quo by temporarily preventing Petitioner's removal from the Court's jurisdiction while leaving all other aspects of DHS custody intact.

Consistent with Rule 65(b)(2), Petitioner requests that should the court grant this ex parte temporary injunction, Respondents be afforded an expedited opportunity to respond and be heard. Petitioner further requests that after adversarial briefing, the Court extend the injunction until litigation in this case is completed.

CONCLUSION

For all the above reasons, this Court should find that Ms. A.T. warrants a TRO or preliminary injunction ordering that Respondents release her from unlawful detention. In the alternative, Ms. A.T. requests the Court issue an immediate ex parte order enjoining

Respondents from transferring her from the District of Colorado or removing her from the United States. If Respondents have already transferred Ms. A.T. outside of the District of Colorado, this Court should order her immediate return.

Dated: March 6, 2026

s/Shira Hereld
Staff Attorney
Shira Hereld (CO 59521)
ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK
7301 Federal Boulevard, Suite 300
Westminster, Colorado 80030
Tel: (720) 457-4151
Email: shereld@rmian.org

/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

/s/ Anjanette Hamilton
Anjanette Hamilton
3025 S. Holly Pl.
Denver, CO 80222
Telephone: (202) 577.8698
Email: anji.hamilton@gmail.com

Pro Bono Attorneys for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

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

Kevin.Traskos@usdoj.gov

/s/ Shira Hereld

Attorney for Petitioner