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

**DAYANA (ALFREDO) MUNOZ
RAMIREZ,**

Petitioner,

v.

DAWN CEJA, in her official capacity as
warden of the Aurora Contract Detention
Facility;

ROBERT GUADIAN, in his official
capacity as Field Office Director, Denver,
U.S. Immigration and Customs Enforcement;

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.

Case No. XXX

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Dayana Munoz Ramirez (“Ms. Munoz”),¹ is a transgender woman from El Salvador who Immigration and Customs Enforcement (“ICE”) detained pursuant to 8 U.S.C. § 1231(a) over 505 days ago. Ms. Munoz is seeking withholding of removal under Section 241(b)(3)(B) of the Immigration and Nationality Act and relief under the implementing regulations of the Convention Against Torture (CAT). *See* 8 C.F.R. §§ 208.16, 208.18. She seeks relief due to past persecution and torture she experienced and overwhelming evidence of widespread, state-sponsored violence perpetrated against transgender women in El Salvador. Her detention of over 16 months has become unreasonably prolonged and is unconstitutional.

2. Ms. Munoz petitions this Court to issue a writ of habeas corpus, ordering Respondents to show cause within three days, providing their reasons, if any, why her detention is lawful. 28 U.S.C. § 2243. She asks this Court to grant her petition and order her immediate release subject to any conditions this Court believes are appropriate and necessary, or in the alternative, order a custody hearing before the immigration judge (“IJ”) where the burden is on the government to establish, by clear and convincing evidence, that her continued detention is justified and that any risk posed by her release cannot be mitigated by alternatives to detention. *Id.* at § 2241.

STATEMENT OF THE CASE

3. Although federal law allows for the arrest and detention of noncitizens in reinstatement of removal, or “withholding-only” proceedings, *see* 8 U.S.C. § 1231(a), the right to detain is limited by important constitutional safeguards. The U.S. Constitution—specifically, the Due Process Clause of the Fifth Amendment—prohibits detention without due process of law.

¹ Ms. Munoz’s sex assigned at birth was male and her legal name was Alfredo Munoz Ramirez. Although she has not had the opportunity to legally change her name, Ms. Munoz is a transgender woman and uses the name Dayana and she/her pronouns. Counsel refers to her accordingly.

Zadvydas. 533 U.S. 678, 690 (2001); *see also Demore v. Kim*, 538 U.S. 510, 523 (2003).

4. Ms. Munoz is a 47 year-old transgender woman from El Salvador seeking withholding of removal and CAT protection. ICE placed her in its custody over 16 months ago. Currently, she has a petition for review pending with the Tenth Circuit, where the Court has ordered a stay of removal pending adjudication of her petition. Her already-prolonged detention is certain to continue for many months, if not years, while the Tenth Circuit adjudicates her immigration case, as well as pending any further remands and appeals. As a result, Ms. Munoz faces additional months or years of detention absent this Court's intervention.

5. Ms. Munoz's prolonged mandatory detention violates her constitutional rights. Her detention for 505 days and counting is now three times longer than the "brief period" of time the Supreme Court in *Demore* found to be presumptively reasonable. 538 U.S. at 513, 529. Yet, she has never had a bond hearing to determine whether her detention is justified, much less have Respondents established by clear and convincing evidence that her release would pose a danger to the community or a flight risk—a violation of her Fifth Amendment due process right to procedural protections that prevent unjustified deprivation of liberty.

6. When detention is prolonged, due process requires a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690-91 (quotations omitted) (citing *Kansas v. Hendricks*, 521 U.S. 346, 356, 117 S. Ct. 2072, 138 L.Ed.2d 501 (1997)). The only justification ICE alleged for Ms. Munoz's continued detention is a cursory statement denying release "due to [her] criminal history." Exh. F. However, the criminal activity ICE relies upon to justify her continued detention includes decades old convictions and fails to consider her significant efforts towards rehabilitation. Exh. G at ¶¶ 4-9. Moreover, no neutral decision-maker—whether a federal judge or an IJ—has ever conducted a

hearing to determine whether her lengthy detention is warranted based on a risk of flight or a danger to the community. *See Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (finding that “since the Due Process Clause prohibits arbitrary deprivations of liberty” a detained noncitizen “could be entitled to an individualized determination as to [her] risk of flight and dangerousness if the continued detention became unreasonable or unjustified.”). In other words, ICE is playing judge and jailer. Absent habeas relief, Ms. Munoz continues to face many more months, if not years, of detention when taking into consideration subsequent appeals or further proceedings before an IJ.

7. Because Ms. Munoz’s prolonged detention violates her constitutional rights, she asks this Court to issue a writ of habeas corpus and order her immediate release. In the alternative, this Court should order her release unless Respondents provide Ms. Munoz a bond hearing before an IJ within seven days, at which hearing Respondents bear the burden of establishing that continued detention is warranted by clear and convincing evidence. If the government cannot meet their burden, the IJ must order Ms. Munoz’s release with appropriate conditions of supervision if necessary or set an appropriate monetary bond taking into consideration her ability to pay.

JURISDICTION AND VENUE

8. Ms. Munoz is currently detained under 8 U.S.C. § 1231(a) in Respondents’ custody at the Denver Contract Detention Facility (“Aurora facility”) in Aurora, Colorado.²

9. This Court has jurisdiction under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas authority); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

² The Aurora facility is also referred to as the Denver Contract Detention Facility. These names are used interchangeably by DHS, and both refer to the facility located at 3130 N. Oakland Street, Aurora, Colorado, 80010.

10. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687.

11. This Court has jurisdiction to grant declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); and FED. R. CIV. P. 57, 65.

12. Venue is proper under 28 U.S.C. § 1391 because Ms. Munoz is detained at the Aurora facility in Aurora, Colorado, within the jurisdiction of this Court. *See* 28 U.S.C. § 2241(d). Venue is also proper because at least one of the Respondents is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this District. 28 U.S.C. § 1391.

THE PARTIES

13. Ms. Munoz is a 47-year-old transgender woman from El Salvador seeking withholding of removal and CAT protection. ICE detained her in November 2023 and placed her at the Aurora facility, where she remains detained.

14. Respondent Dawn Ceja is named in her official capacity as the warden of the Aurora facility, where Ms. Munoz is detained, and is therefore her legal custodian

15. Respondent Robert Guadian is named in his official capacity as the Acting ICE Denver Field Office Director. The Denver Field Office is responsible for carrying out ICE’s immigration detention operations at all of Colorado’s detention centers. Respondent Guadian is a legal custodian of Ms. Munoz.

16. Respondent Kristi Noem is named in her official capacity as the Secretary of DHS.

She is responsible for the administration of U.S. immigration law and is legally responsible for the process of Ms. Munoz's detention and removal. As such, she is a legal custodian of Ms. Munoz.

17. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Ms. Munoz. As such, he is a legal custodian of Ms. Munoz.

18. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of Colorado and is legally responsible for administering Ms. Munoz's removal and bond proceedings as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Ms. Munoz.

STATEMENT OF FACTS

A. Ms. Munoz's Background.

19. Ms. Munoz is a 47-year-old native and citizen of El Salvador. Exh. A, Tab A. Though she has known she does not identify with her assigned sex at birth since she was a child, she felt compelled to conceal her gender identity for most of her life for her own safety. *Id.* at ¶¶ 5, 7.

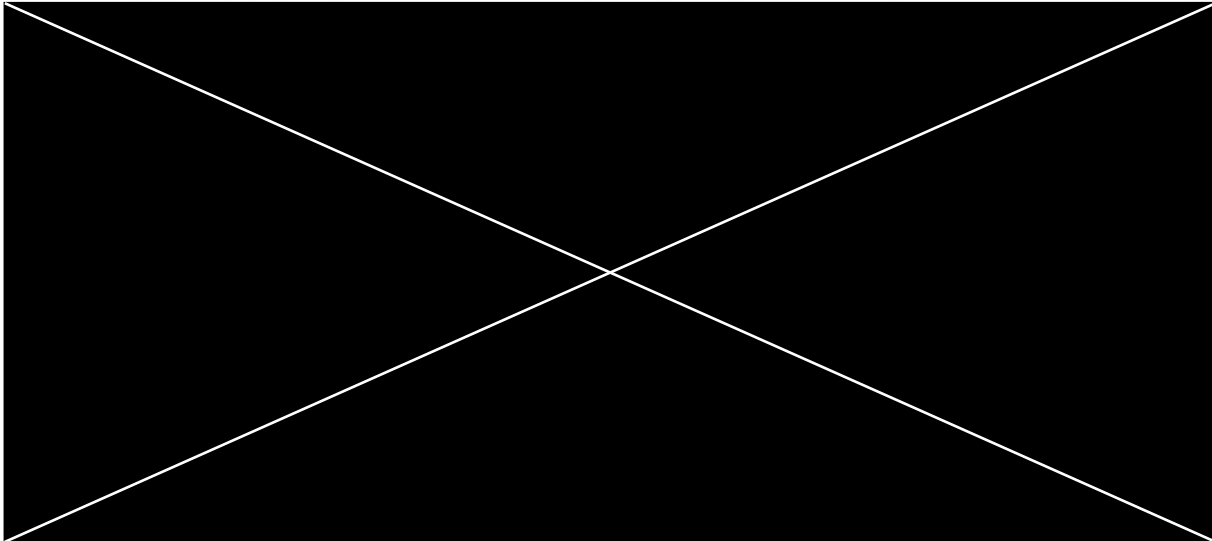
20. In 1993, when Ms. Munoz was approximately 15 years old, she joined her mother in the United States as a lawful permanent resident. Exh. A, Tab A at ¶ 2. Even in the United States, due to fear of rejection, she felt compelled to hide her gender identity and pursue relationships with women. *Id.* at ¶ 9. In her early 20s, she married a woman and had two children who are now adults. *Id.* at ¶ 10.

21. After living in the United States for more than ten years, around 2016, Ms. Munoz was placed in removal proceedings based on a 2006 conviction for unlawful taking of a vehicle.

Exh. A, Tab A at ¶ 16. Around this time, Ms. Munoz disclosed her gender identity to her family for the first time. *Id.* at ¶ 11. As a result, her entire family, including her wife and children, stopped speaking to her and her marriage ended. *Id.* at ¶¶ 11-13.

22. Because Ms. Munoz was in the process of coming out as transgender for the first time and was not yet public with her identity, she did not disclose her gender identity while in removal proceedings. Exh. A, Tab A at ¶ 16. Instead, she referred to herself by her birth name, Alfredo, and used he/him pronouns. *Id.* The IJ denied her applications for relief, ordered removal, and in December 2018, Ms. Munoz was removed to El Salvador. *Id.* at ¶ 17.

23. After her removal, Ms. Munoz began living openly as transgender and started publicly identifying as a woman in El Salvador; however, this quickly placed her in grave danger. Exh. A, Tab A at ¶ 17. Approximately one month after her arrival in El Salvador, she faced physical beatings and threats to her life at the hands of gang members who targeted her because of her feminine appearance. *Id.* at ¶ 18. Around the same time, police officers physically beat Ms. Munoz with their fists and rifles when they learned of her transgender identity. *Id.* at ¶ 19-20.



26. Fearing for her life, Ms. Munoz fled El Salvador and re-entered the United States

around May 2019. Exh. A, Tab A at ¶ 21. Around 2020, Ms. Munoz was convicted of car theft. *Id.* at ¶ 22. She was riding as a passenger in a car with a friend driving when the police pulled the car over. *Id.* Ms. Munoz was unaware the car had been stolen. *Id.* In November 2023, Ms. Munoz was taken into immigration custody at the Aurora detention center and housed in a unit dedicated to transgender people. *Id.* While in immigration custody, she began gender affirming healthcare in the form of hormone therapy. *Id.* at ¶¶ 23-26.

Ms. Munoz's Withholding-Only Proceedings.

27. After being placed in ICE custody, Ms. Munoz expressed a fear of return and was referred for a reasonable fear interview, where she demonstrated a reasonable possibility of persecution in El Salvador. Exh. B. at 2. She was subsequently placed in withholding-only proceedings, where she applied for withholding of removal and CAT relief. Exh. B at 2. Unable to secure counsel while detained, Ms. Munoz appeared *pro se* before the Aurora Immigration Court. Exh. C at 8; Exh. A, Tab A at ¶ 28.

28. At a hearing on April 4, 2024, the IJ notified the parties she was denying relief, and issued a written decision on May 16, 2024. Exh. B. Using quotation marks around Ms. Munoz's pronouns, the IJ identified 10 factors that, in her view, supported an adverse credibility finding. *Id.* at 5, 7, 8. The IJ also denied all relief based on lack of corroboration, despite Ms. Munoz's submission of numerous pieces of corroborating evidence. *Id.* at 11-12.

29. The IJ next found Ms. Munoz statutorily barred from withholding of removal, finding that her 2006 conviction for unlawful taking of a vehicle constituted a particularly serious crime. Exh. B at 8-10. She reached this conclusion without considering any criminal records from that event because DHS did not submit relevant evidence, and Ms. Munoz—again, a *pro se* detained litigant – was unable to do so. *Id.* at 8-9. Lastly, the IJ denied CAT protection, reasoning

that Ms. Munoz had not identified as transgender outside of removal proceedings and did not intend to do so in the future. *Id.* at 10-11.

30. Ms. Munoz timely appealed the decision to the Board of Immigration Appeals (BIA). She subsequently obtained counsel who assisted her in filing an appellate brief. Exh. A, Tab A at ¶ 36.

31. On October 28, 2024, the BIA affirmed the IJ decision over a dissent. Exh. C. Despite declining to affirm seven of the ten findings underpinning the IJ's adverse credibility decision, the majority opinion nonetheless found that Ms. Munoz was ineligible for withholding of removal and CAT relief based on the adverse credibility finding. *Id.* at 3-5. The Board accepted three aspects of the IJ's credibility finding: (1) that neither Ms. Munoz nor her mother disclosed her transgender identity in her prior removal proceedings, (2) discrepancies regarding the exact timeline of Ms. Munoz's removal and subsequent harm in El Salvador, and (3) the IJ's inferences regarding gang affiliation based on Ms. Munoz's tattoos. *Id.* Regarding her application for CAT protection, the Board acknowledged that transgender women in El Salvador face a risk of harm, but held that, because of Ms. Munoz's adverse credibility finding, she could not establish that she will more likely than not face torture with the acquiescence of the Salvadoran government. *Id.* at 4. The Board did not make any findings about whether her unlawful taking of a vehicle conviction constitutes a particularly serious crime.

32. In a dissenting opinion, a Board member stated that she would have reversed and remanded the IJ's decision. Exh. C at 6. The dissent found that the record demonstrated clear error "in significant respects under the totality of circumstances," warranting a remand for further evaluation of her credibility and applications for relief. *Id.* The dissent stated that it was clear error for the IJ to characterize the timing of when Ms. Munoz began identifying as transgender as

implausible. *Id.* Specifically, Ms. Munoz repeatedly stated she was not certain about the dates she came out to her family but recalled it was around the time of her prior proceedings. *Id.* The dissent stated, “It is entirely plausible that an individual would not reveal her transgender identity in a court proceeding that occurred months after she first began revealing her identity to close family members.” *Id.* at 7. The dissent further elucidated reasons the IJ’s other findings were clearly erroneous regarding Ms. Munoz’s transgender identity and the harm she experienced. *Id.* The dissent also expressed concern over the fact that the IJ misgendered Ms. Munoz repeatedly and used “unnecessary quotation marks” around her pronouns, suggesting that such an approach reflected a lack of “dignity, respect, courtesy, and fairness” in the proceedings. *Id.* at 10.

33. On November 20, 2024, Ms. Munoz filed a motion to reopen and a motion for an emergency stay of removal with the BIA. Exh. A. On November 26, 2024, Ms. Munoz filed a petition for review and a motion for an emergency stay of removal before the Tenth Circuit. *See Munoz-Ramirez v. Bondi*, Cas No. 24-9572, Dkt. 1, 7 (10th Cir. 2024). On December 3, 2024, DHS filed a statement of non-opposition to the Tenth Circuit stay motion. *Id.* at Dkt. 14. On December 4, 2024, the BIA granted a stay of removal. On December 5, 2024, the Tenth Circuit separately granted a stay of removal. Exh. D. Based on her pending motion to reopen before the BIA, Ms. Munoz subsequently filed a joint motion to hold the briefing schedule in abeyance before the Tenth Circuit, which was granted on December 16, 2024. *Munoz-Ramirez*, Cas No. 24-9572, Dkt. 18, 19.

34. On March 10, 2025, the BIA issued a decision denying Ms. Munoz’s motion to reopen. Exh. E. The BIA found that Ms. Munoz had presented “highly material” evidence to her protection claim, including medical records demonstrating her transgender identity. *Id.* Indeed, the BIA held that “the medical records establish on their face that she was sufficiently truthful about

her transgender identity to persuade a Deportation Officer employed by DHS to sign a medical document identifying her as a ‘transgender female’ ...five months before DHS argued that [her] status as a transgender woman was an invented identity.” *Id.* Nonetheless, the BIA found that Ms. Munoz, proceeding *pro se* while detained before the IJ, had not demonstrated that the evidence was previously unavailable. *Id.*

35. On March 26, 2025, Ms. Munoz filed a second petition for review with the Tenth Circuit, appealing the BIA’s denial of her motion to reopen and requesting that her petitions be consolidated pursuant to 8 U.S.C. § 1252(b)(6). *Munoz-Ramirez v. Bondi*, Case No. 25-9534, Dkt. 1 (10th Cir. 2025). On March 27, 2025, the Court consolidated her petitions, lifted abatement, and ordered that Ms. Munoz file her opening brief 40 days after the Agency record is filed. *Munoz-Ramirez*, Cas No. 25-9534, Dkt. 8.

36. Ms. Munoz will remain detained for many more months, or potentially years, while the Tenth Circuit adjudicates her claims. Moreover, even if Ms. Munoz wins her appeal at the Tenth Circuit, her case will not be automatically resolved. Instead, Ms. Munoz will have to wait for the Tenth Circuit to remand her case to the BIA and then ask the BIA to remand her case to the IJ. Therefore, Ms. Munoz’s detention will continue for an unknown—but inevitably prolonged—period of time.

Ms. Munoz’s Harmful Detention in ICE Custody.

37. ICE has detained Ms. Munoz throughout the entirety of her withholding-only proceedings. Despite being housed in a dedicated transgender unit, she has endured substantial harm in detention, and her continued confinement only increases these dangers. Exh. A, Tab A at ¶ 28; Exh. G at ¶ 10.

38. Ms. Munoz faces daily verbal harassment by cisgender men who are detained

whenever she leaves her pod. Exh. G at ¶ 10. These individuals regularly subject her to degrading comments, catcalling, and other forms of harassment that make her feel unsafe in detention. *Id.* Despite her efforts to avoid these encounters, she is unable to escape the persistent harassment that follows her throughout the facility. *Id.*

39. In addition, Ms. Munoz has also been subjected to threats and intimidation by detention staff. Exh. G at ¶ 15. On one occasion, a staff member attempted to forcibly move her back into a unit where she had an active separation order with another detained individual. *Id.* Despite Ms. Munoz explaining that moving her into that unit would endanger her, the staff member dismissed her concerns, yelled at her, and threatened to place her in solitary confinement if she refused to comply. *Id.* Ms. Munoz reported the incident and filed a grievance, but no further action was taken to protect her. *Id.*

40. Ms. Munoz has also experienced severe medical neglect in detention. Exh. G at ¶ 14. She suffers from significant dental problems, including the loss of a dental bridge that holds her four front teeth, which has made eating painful and difficult. *Id.* Although she was told it would take six months to receive a new bridge, more than a year has passed with no treatment. *Id.* Additionally, a filling fell out over six months ago, yet she has still not seen a dentist. *Id.* The only treatment she has received is pain medication and a gel, which have become ineffective after prolonged use. *Id.* Despite filing multiple medical requests and grievances, her urgent need for medical care remains unaddressed. *Id.*

41. Ms. Munoz also struggles with anxiety and a sleeping disorder, which have worsened significantly since her detention. Exh. G at ¶¶ 11, 12. A recent attempt to treat her anxiety resulted in the prescription of medication at too high a dose, causing severe side effects such as chest pain, nausea, and heart palpitations. *Id.* While her dosage was eventually adjusted, nothing

has been done to address the underlying stress and anxiety caused by her detention. *Id.*

42. Beyond these immediate harms, Ms. Munoz now faces additional risks to her safety due to recent policy changes. Executive Order 14166 directs the Attorney General and Secretary of Homeland Security to ensure that transgender women are removed from women's detention facilities and amends federal regulations to prohibit housing transgender women with cisgender women.³ Additionally, the order requires the Bureau of Prisons to revise its policies to eliminate federal funding for gender-affirming medical care in detention. While Ms. Munoz has not yet been impacted by these policy changes, the risk of being transferred to a facility that does not align with her gender identity and losing access to essential medical care is imminent. These looming threats further underscore the urgent need for her release.

43. Ms. Munoz has a viable plan for release should this Court grant her petition. Exh. H. Casa Marianella, a haven for immigrants in Austin, Texas, has agreed to provide Ms. Munoz with access to supportive housing, basic necessities, and connections to social services, including gender-affirming medical care and mental health services. *Id.* Additionally, she intends to comply with all of the conditions of her release and attend all future hearings. Exh. G at ¶ 19.

44. As it stands, Ms. Munoz has been detained for over 505 days and faces many more months, or years, of further detention. While her case is pending, the government cannot remove her to El Salvador—the only country ICE identified as a possible country of removal. Therefore, her detention is unconstitutionally prolonged and will continue absent this Court's intervention.

EXHAUSTION OF REMEDIES

45. Petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion

³ <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

requirements. Further, there is no exhaustion requirement because no administrative agency exists to adjudicate a petitioner's constitutional challenges. *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994). Neither an IJ nor the BIA can rule on a petitioner's constitutional claims. See *Matter of C--*, 20 I&N Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); see also *Gonzalez v. O’Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that “the BIA has no jurisdiction to adjudicate constitutional issues”).

46. Moreover, this Court has ruled that “exhaustion is not required in the immigration context when it would be futile...or when ‘the interests of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own authority.’” *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000) and *Gonzalez-Portillo v. U.S. Attorney Gen., Reno*, No. CIV. A. 00-Z-2080, 2000 WL 33191534, at *4 (D. Colo. Dec. 20, 2000)).

47. Even so, Ms. Munoz exhausted all possible remedies available to her. Ms. Munoz is detained under 8 U.S.C. § 1231(a) and thus cannot request a custody redetermination hearing⁴ before an IJ. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022). Ms. Munoz has submitted a written request for her release to ICE, the most recent being in January 2025, which ICE denied. Exh. F. There are no further remedies to exhaust.

⁴ Custody redetermination hearings in immigration court are often colloquially known as “bond hearings,” even though an immigration judge has the authority to order release on bond or conditional release. Throughout this Petition and the cases cited herein, the phrases “custody redetermination hearing” and “bond hearing” are used interchangeably.

LEGAL BACKGROUND

A. Ms. Munoz's Prolonged Detention Violates Due Process.

48. It is “well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings,” *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)), “regardless of their citizenship status, means or legality of entry, or length of stay,” *Padilla v. ICE*, 953 F.3d 1134, 1142 (9th Cir. 2020); *See Wong v. United States*, 163 U.S. 228, 237–38 (1896); *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982). “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. *Zadvydas*, 533 U.S. at 690. The Due Process Clause ensures that “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Under these due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

49. Due process therefore requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotations omitted). Civil immigration detention is therefore constitutional only in “certain special and ‘narrow’ nonpunitive ‘circumstances.’” *Id.* (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court identified those limited circumstances as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; *see also Demore*, 538 U.S. at 515, 527–28.

50. In *Demore*, the Supreme Court considered the constitutionality of another

mandatory detention statute, § 1226(c). 538 U.S. at 513. The Supreme Court ultimately rejected a facial attack to that provision, but it “did so because it understood that the [mandatory] detention would last only for a ‘very limited time.’”⁵ *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 208 (3d Cir. 2020) (quoting *Demore*, 538 U.S. at 529 n.12). “Relying on the Government’s representations, the Court explained that detention ‘under § 1226(c) lasts roughly a month and a half in the vast majority of cases’ and ‘about five months in the minority of cases in which the [noncitizen] chooses to appeal.’” *Id.* at 209 (quoting *Demore*, 538 U.S. at 530). Importantly, however, the Court noted that “[s]ince the Due Process Clause prohibits arbitrary deprivations of liberty” a detained noncitizen “could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified.” *Id.* at 532 (Kennedy, J., concurring).

51. The Supreme Court recently considered the mandatory detention scheme in § 1231(a) but expressly declined to reach the merits of the due process claim at issue here. *Arteaga-Martinez*, 596 U.S. at 575. Further, as in *Demore*, the Court noted that “as-applied constitutional challenges remain available to address ‘exceptional’ cases.” *Id.* at 583.

52. Following *Zadvydas* and *Demore*, courts around the country, including in this district, have overwhelmingly held that, regardless of what the statute authorizes at the outset of detention, once mandatory detention becomes unreasonably prolonged, due process requires a bond hearing. *See e.g., Black v. Decker*, 103 F.4th 133, 149 (2d Cir. 2024); *German Santos*, 965

⁵ The Solicitor General in 2016 revealed that the statistical information provided by the government and relied upon by the Supreme Court in *Demore* was inaccurate, and the true average length of immigration detention was shown to be much longer. *See Jennings*, 138 S. Ct. at 869 (Breyer, J., dissenting) (“The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did . . . thousands of people here are held for considerably longer than six months without an opportunity to seek bail.”).

F.3d at 209 (holding that at a certain point, “due process requires the Government to justify continued detention at a bond hearing” for a petitioner detained under § 1226(c)) (internal citations and quotations omitted); *Juarez v. Choate*, No. 1:24-CV-00419-CNS, 2024 WL 1012912, at *8 (D. Colo. Mar. 8, 2024) (“continued detention [under § 1231] requires an individualized bond hearing before an IJ in order to comport with due process”); *Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *4 (S.D.N.Y. Feb. 6, 2023) (finding that “the Government has denied Petitioner due process by subjecting him to prolonged detention under § 1231(a)(6) without affording him a bond hearing”); *Michelin v. Oddo*, No. 3:23-CV-22, 2023 WL 5044929, at *7 (W.D. Pa. Aug. 8, 2023), *reconsideration denied in part*, No. 3:23-CV-22, 2023 WL 5672278 (W.D. Pa. Sept. 1, 2023) (applying the framework articulated in *German Santos* for a petitioner detained pursuant to § 1231(a) and finding that “his continued detention without a bond hearing violates his rights under the Due Process Clause”); *Zavala v. Martin*, No. 21-500, 2022 WL 684147, at *3, *6 (D.R.I. Mar. 8, 2022) (finding petitioner detained under § 1231(a) entitled to a bond hearing where his detention lasted nearly eleven months and his appeal was likely to last several more months); *Viruel Arias v. Choate*, No. 1:22-CV-02238-CNS, 2022 WL 4467245, at *3 (D. Colo. Sept. 26, 2022) (finding that petitioner’s “continued detention requires an individualized bond hearing before an IJ to ‘comport with due process’”) (citations omitted); *S. Singh v. Choate*, No. 19-CV-00909 (KLM), 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019) (same); *Sheikh v. Choate*, No. 22-CV-01627 (RMR), 2022 WL 17075894 at *6 (D. Colo. July 27, 2022) (same).

53. These decisions are consistent with the maxim that the “Due Process Clause foresees eligibility for bail as part of due process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotations and citations omitted).

54. The Constitution therefore requires scrutiny of an individual's detention when it becomes prolonged. *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months"); *Demore*, 538 U.S. at 529–30. Further, courts have recognized that "[t]he longer the duration of incarceration, the greater the deprivation." *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020). As such, "as the period of confinement grows, so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Id.* at 853 (citing *Zadvydas*, 533 U.S. at 701) (internal quotations committed).

55. Courts in this District apply a six-factor test when analyzing whether a noncitizen's mandatory detention has become unconstitutionally prolonged, violating due process. Those factors include:

- (1) the total length of detention to date;
- (2) the likely duration of future detention;
- (3) the conditions of detention;
- (4) delays in the removal proceedings caused by the noncitizen;
- (5) delays in the removal proceedings caused by the government;
- and
- (6) the likelihood that the removal proceedings will result in a final order of removal.

E.g., *Juarez*, 2024 WL 1012912, at *6-7 (applying the six-factor balancing test to a prolonged detention claim arising under § 1231); *Daley v. Choate*, No. 22-CV-03043-RM, 2023 WL 2336052, at *6 (D. Colo. Jan. 6, 2023); *Viruel Arias*, 2022 WL 4467245, at *2; *Sheikh*, 2022 WL 17075894, at *6; *B. Singh v. Garland*, No. 21-CV-00715 (CMA), 2021 WL 2290712, at *4 (D. Colo. June 4, 2021); *Villaescusa-Rios v. Choate*, No. 20-CV-03187 (CMA), 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021); *Singh*, 2019 WL 3943960, at *5.

Under the six-factor balancing test, Ms. Munoz has established that her prolonged detention is unreasonable and unconstitutional.

Duration of Detention & Likelihood of Continued Detention

56. The first and “most important factor” courts consider in as-applied challenges to continued mandatory detention is the duration of detention. *See German Santos*, 965 F.3d at 211. The Supreme Court has suggested that detention becomes unreasonably prolonged when it exceeds six months. *See Demore*, 538 U.S. at 529–30; *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of detention for more than six months.”). Ms. Munoz’s more than 16 months of detention far exceeds that six-month period and is more than three times longer than what the Supreme Court in *Demore* considered a reasonable “brief period.” *Demore*, 538 U.S. at 513, 529.

57. Ms. Munoz’s 16 months of detention strongly weighs in her favor. *Sheikh*, 2022 WL 17075894, at *3 (finding detention of nearly 13 months “weighs strongly in Petitioner’s favor”); *Daley*, 2023 WL 2336052, at *3 (same, for detention of fourteen months). In fact, many courts, including courts in this District, have found significantly shorter lengths of detention unconstitutionally prolonged. *See id.*; *see also Galan-Reyes v. Acoff*, 460 F. Supp. 3d 719, 721 (S.D. Ill. 2020) (eight month detention); *Vargas*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019) (nine month detention); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (seven month detention); *Gordon v. Shanahan*, No. 15-cv-261, 2015 WL 1176706, *3–4 (S.D.N.Y. March 13, 2015) (eight months); *Villaescusa-Rios*, 2021 WL 269766, at *3 (collecting cases); *see also Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1217-18 (11th Cir. 2016) (“The need for a bond inquiry is likely to arise in the six-month to one-year window”).

58. Similarly, the likely duration of future detention weighs in Ms. Munoz’s favor. Ms. Munoz currently has two petitions for review pending before the Tenth Circuit. *See supra* at ¶¶ 33-36. Her opening brief is currently due 40 days after the Agency record is filed, which has not

yet occurred. *Id.* Thus, there is no briefing schedule currently in place. Absent this Court's intervention, she is all but certain to spend many more months in detention as the Tenth Circuit adjudicates her case. *Id.* "Courts examine the anticipated duration of all removal proceedings—including administrative and judicial appeals—when estimating how long detention will last." *Villaescusa-Rios*, 2021 WL 269766, at *3; *see also Muse v. Sessions*, 409 F. Supp. 3d 707, 716–17 (D. Minn. 2018) ("In estimating when detention will end, courts take into account the anticipated duration of all removal proceedings, including administrative and judicial appeals."); *Smith v. Barr*, 444 F. Supp. 3d 1289, 1302 (N.D. Okla. 2020) ("[T]he fact that his detention may last well over a year while he exhausts his appellate rights demonstrates that his detention is likely to be further prolonged, and thus less constitutionally reasonable.").

59. Indeed, multiple other District Courts have ordered a bond hearing in this procedural posture. *See, e.g., Smith*, 444 F. Supp. 3d at 1304; *Zavala*, 2022 WL 684147, at *3, *6 (ordering bond hearing for petitioner in withholding-only proceedings with appeal pending detained eleven months); *Al-Sadoon v. Lynch*, No. 21-11438, 2022 WL 492971, at *7–10 (E.D. Mich. Feb. 17, 2022); *Pedro O. v. Garland*, 543 F. Supp. 3d 733, 739 (D. Minn. June 14, 2021); *Jaime M. v. Garland*, No. No. 21-CV-743, 2021 WL 5567864 at *3 (D. Minn. Nov. 29, 2021) (ordering a bond hearing when the BIA appeal had been fully briefed, yet remained pending, for more than a year); *Graham v. Decker*, 20 Civ. 3168 (PAE), 2020 WL 3317728, at * 5 (S.D.N.Y. June 18, 2020); ("Graham has ahead of him potentially lengthy appeals before the BIA and the Second Circuit"); *Villaescusa-Rios v. Choate*, 2021 WL 269766, at *2.

60. Ms. Munoz's 505 day detention is already prolonged and will continue for months or years absent this Court's intervention. Accordingly, these factors "weigh strongly in [her] favor." *Sheikh*, 2022 WL 17075894, at *3; *Daley*, 2023 WL 2336052, at *3.

Conditions of Detention

61. The conditions of Ms. Munoz’s confinement further support a finding that her prolonged detention is unreasonable and thus unconstitutional. The purpose of immigration detention is civil, not punitive. However, merely calling detention “civil” does not make it so when the conditions are not “meaningfully different” from criminal custody. *German Santos*, 956 F.3d at 211 (citations omitted). Indeed, “whether [Ms. Munoz] is detained in a luxurious hotel or a detention facility, or some other building, [s]he is being deprived of [her] liberty—thus, this factor seems somewhat besides the point.” *Singh*, 2019 WL 3943960, at *6. Therefore, when conditions of detention resemble a penal institution, this factor weighs in favor of finding that detention is unreasonable. *Id.*; *Muse*, 409 F. Supp. 3d at 717.

62. Courts in this district have found that conditions in civil immigration detention are *not* meaningfully different from criminal detention. *Singh*, 2021 WL 2290712, at *4 (finding conditions at the Aurora facility to be essentially equivalent to criminal incarceration); *Singh*, 2019 WL 3943960, at *6 (same); *de Zarate v. Choate*, No. 23-CV-00571-PAB, 2023 WL 2574370, at *4 (D. Colo. Mar. 20, 2023) (“[C]ourts have concluded that [the Aurora facility] is enough like a corrections facility for this factor to favor” individuals subject to immigration detention) (citing *Daley*, 2023 WL 2336052, at *4); *see also Velasco-Lopez*, 978 F.3d. at 851 (finding that a noncitizen detained for immigration proceedings where they cannot “maintain employment or see . . . family or friends or others outside visiting hours [and] the use of a cell phone [is] prohibited, and [there is] no access to the internet or email and limited access to the telephone” are conditions “indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes”). Further, because the conditions of confinement determine whether detention is merely “civil” in name only, courts assign greater weight to the

conditions of confinement as the length of an individual's detention grows. *German Santos*, 965 F.3d at 211.

63. Here, Ms. Munoz is currently detained at the Aurora facility where conditions are indistinguishable from criminal incarceration. Furthermore, for nearly the last decade, immigrants detained at the Aurora facility have raised the alarm about oppressive and unsafe conditions, including substandard medical and mental health care, medical neglect, failures to comply with agency standards, reports of excessive use of force, retaliation against First Amendment protected speech, and claims related to wage violations and forced labor.⁶ In this context, three people detained at Aurora have died since 2012, including the recent death of Melvin Ariel Calero-Mendoza in 2022.⁷ Tellingly, this Court already held that the location of Ms. Munoz's

⁶ See e.g., RMIAN 2023 Complaint, *supra* n. 3; AIC, RMIAN, Immigrant Justice Idaho (IJI), Mariposa Legal, "Violations of ICE COVID-19 Guidance, PBNDS 2011, and Rehabilitation Act of 1973 at the Denver Contract Detention Facility," (Feb. 2022), available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_medical_neglect_people_sick_covid_19_colorado_facility_complaint1.pdf; AIC, IJI, Immigration Equality, "Complaint re: Racial Discrimination, Excessive Use of Force at the Denver Contract Detention Facility," (March 24, 2022), available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_racial_discrimination_excessive_force_colorado.pdf; Order, *Menocal, et al., v. GEO Group, Inc.*, No. 1:14-cv-02887-JLK-MEH, ECF 380 at 40-41 (Oct. 18, 2022) ("GEO went beyond its contract with ICE in requiring detainees to clean up all common areas and after other detainees under the threat of segregation."); ACLU of Colorado, "Cashing in on Cruelty: Stories of death, abuse, and neglect at the GEO immigration detention facility in Aurora," (2019), available at: https://www.aclu-co.org/sites/default/files/ACLU_CO_Cashing_In_On_Cruelty_09-17-19.pdf (hereinafter ACLU Report) (reporting on substandard medical and mental health care at the Aurora Detention Facility); AILA, "Complaint Filed with DHS Oversight Bodies Calls for Improvement to Medical and Mental Health Care of Immigrants in Aurora Detention Center," June 4, 2018, available at: <https://www.aila.org/advo-media/press-releases/2018/complaint-filed-with-dhs-oversight-bodies-calls> ("The complaint illustrates the government's failure to comply with official policies on mandated care; grossly substandard medical and mental health care; limited transparency and public accountability regarding many other aspects of detainee care; and facility staff and ICE's deliberate indifference to a detainee's serious medical needs.").

⁷ See Matt Bloom, "Aurora ICE death autopsy released, raises questions about medical care in federal detention centers," CPR News (Feb. 15, 2023), available at: <https://www.cpr.org/2023/02/15/aurora-ice-inmate-deaths/> ("Medical experts, along with family

incarceration weighs in a noncitizen's favor because it is akin to a penal institution. *Sheikh*, 2022 WL 17075894, at *8-9; *Singh*, 2021 WL 2290712, at *3-4; *Villaescusa-Rios*, 2021 WL 269766, at *4; *Cf. de Jesus de Jesus v. Wolf*, No. 20-cv-03637 (RBJ), 2021 WL 603056, at *3 (D. Colo. Feb. 16, 2021).

64. Additionally, as a transgender woman, Ms. Munoz faces increased vulnerability in detention.⁸ She has been relentlessly harassed by cisgender men in detention, who subject her to degrading comments, catcalling, and persistent sexual harassment every time she leaves her pod. Exh. G at ¶ 10. Although she is housed separately from the general male population, she is exposed to this dehumanizing treatment on a daily basis. *Id.*

65. Ms. Munoz's vulnerability is compounded by the detention facility's failure to address her serious medical needs. Exh. G at ¶ 11-14. She has endured severe dental pain for over a year after losing a dental bridge that left her without four front teeth, which has significantly impacted her ability to eat and speak. *Id.* at ¶ 14. Despite numerous medical requests and grievances, she has not received adequate dental care and her pain remains unrelieved. *Id.* Her mental health has also deteriorated in detention due to severe anxiety and a sleep disorder, which was exacerbated by improper medication management by the facility. *Id.* at ¶ 12. As of December 2024, she received a proper dosage, but that experience has caused additional stress and anxiety, as Ms. Munoz now lacks confidence in the medical care offered at the facility. *Id.*

members, say the report shows that Calero-Mendoza's death was potentially preventable and follows a pattern of deaths at ICE facilities.”).

⁸ See RMIAN, National Immigration Project, AIC, “Complaint underscoring why people who are transgender and nonbinary should not be detained in civil immigration detention,” (April 2024), available at: https://nirpnl.org/sites/default/files/2024-04/CRCL_complaint-transgender-care.pdf; Laura P. Minero, et. al, “Latinx trans immigrants’ survival of torture in U.S. detention: A qualitative investigation of the psychological impact of abuse and mistreatment”, Int. J. Transgender Health (July 19, 2021), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9045414/>.

66. Ms. Munoz has also been subjected to threats and intimidation by detention staff. Exh. G at ¶ 15. In one incident, a male officer demanded that Ms. Munoz move to a housing unit where an active separation order was in place due to prior issues with another detained individual who had been targeting Ms. Munoz. *Id.* When she explained to the officer that moving to that unit would place her in danger, the officer yelled at her and threatened to place her in solitary confinement. *Id.* Despite reporting the incident and filing a grievance, no meaningful action was taken. *Id.*

67. In light of the foregoing, it is clear that Ms. Munoz's ongoing civil detention is in a setting that is as punitive (or worse) than criminal custody. Therefore, this factor strongly weighs in her favor.

Reasons for Delay

68. As courts have recognized, "the Constitution does not hold exhaustion of legal remedies against a [noncitizen]." *M.D.F. v. Johnson*, No. 3:20-CV-0829-G-BK, 2020 WL 7090125, at *2 (N.D. Tex. Dec. 3, 2020) (citing *German Santos*, 965 F.3d at 212). As such, courts nationwide have recognized that any delay caused by an individual's good-faith challenges to removal cannot be held against them. *de Zarate*, 2023 WL 2574370, at *4 ("[T]he Court will not hold her efforts to seek relief through the available legal channels against [a noncitizen]."); *Villaescusa-Rios*, 2021 WL 269766, at *4; *Singh*, 2019 WL 3943960, at *6; *see also Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) (abrogated on other grounds by *Jennings*, 138 S. Ct. at 830); *Smith*, 444 F. Supp. 3d at 1303; *Chairez-Castrejon v. Bible*, 188 F. Supp. 3d 1221, 1229 (D. Utah 2016). Under this factor, courts ask whether the reasons for delays are due to "careless or bad-faith errors in the proceedings." *German Santos*, 965 F.3d at 211 (internal quotations omitted); *Sheikh*, 2022 WL 170758944, at * 3; *Villaescusa-Rios*, 2021 WL 269766, at * 3.

69. Ms. Munoz did not cause delays in the adjudication of her immigration case. Before the IJ and while appearing *pro se*, Ms. Munoz diligently prepared her applications for relief, including gathering evidence to support her claim while in detention. Exh. A, Tab A at ¶ 28. After the IJ's May 16, 2024 written decision denying relief, Ms. Munoz timely filed a *pro se* Notice of Appeal, requested one 21-day briefing extension, and quickly secured *pro bono* counsel to assist her in her appeal. *Id.* at 36. After the BIA denied her appeal, Ms. Munoz timely filed a Petition for Review before the Tenth Circuit. *Munoz-Ramirez*, Cas No. 24-9572, Dkt. 1. Further, she timely filed a motion to reopen before the BIA, which included new and previously unavailable evidence. Exh. A. When the BIA denied her motion to reopen on March 10, 2025, she timely filed a second petition for review, requesting that the cases be consolidated and that the Court issue a briefing schedule. *Munoz-Ramirez*, Case No. 25-9534, Dkt. 1.

70. Ms. Munoz cannot be prejudiced by exercising her right to non-frivolously litigate her case and ensure her proceedings are fundamentally fair. *Martinez v. Ceja*, No. 24-CV-03056-PAB, 2024 WL 5168143, at *6 (D. Colo. Dec. 19, 2024) (“[T]he Court will not hold [Petitioner’s] efforts to seek relief through the available legal channels against him.”); *Villaescusa-Rios*, 2021 WL 269766, at *4; *Singh*, 2019 WL 3943960 at *6; *see also German Santos*, 965 F.3d at 211 (noting that doing so would “effectively punish” a petitioner for “pursuing applicable legal remedies”) (cleaned up); Therefore, this factor weighs in favor of finding Ms. Munoz’s continued detention unreasonable.⁹

Likelihood that Proceedings Will Result in Removal

71. Finally, Ms. Munoz’s proceedings are unlikely to result in removal. Prior to fleeing,

⁹ Regarding the fifth factor, counsel is not aware of any unreasonable delays caused by the government in this case.

Ms. Munoz suffered severe persecution and torture [REDACTED]

[REDACTED] and threats to her life at the hands both state and private actors on account of her gender identity. Exh. A, Tab A at ¶¶ 16-21. Many of her persecutors were police officers themselves. *Id.* Further, when Ms. Munoz sought help from the police after suffering severe violence by private actors, the police refused to help her, laughed in her face, and stated it was her fault because she was dressed in women's clothing and makeup. *Id.*

72. In addition to her testimony about her past persecution and torture, Ms. Munoz submitted robust country conditions evidence documenting widespread, systemic, state-sponsored violence against LGBTQIA+ individuals in El Salvador—particularly against transgender women. Even the Board recognized the significant threat to transgender women in El Salvador. *See* Exh. C at 4 (“We acknowledge the applicant’s claim that record evidence demonstrates that transgender women in El Salvador face a severe risk of harm.”). Country conditions evidence alone is sufficient to demonstrate that she faces a substantial risk of persecution and torture, even in the absence of credible testimony. 8 C.F.R. § 1208.16(c)(3); *Ndudzi v. Garland*, No. 20-60782, 2022 WL 9185369, at *6 (5th Cir. 2022); *see also Mansour v. INS*, 230 F.3d 902, 908 (7th Cir. 2000) (refusing to allow adverse credibility finding to control in light of “continued systemic discrimination” against Assyrian Christians in Iraq); *Gebreeyesus v. Gonzales*, 482 F.3d 952 (7th Cir. 2007) (an applicant “may prevail on a theory of future persecution despite an IJ’s adverse credibility ruling as to past persecution, so long as the factual predicate of [her] claim of future persecution is independent of the testimony that the IJ found not to be credible”); *Kamalthas v. I.N.S.*, 251 F.3d 1279 (9th Cir. 2001).

73. Ms. Munoz has a viable claim for relief under withholding of removal and protection under the Convention against Torture based on her past persecution and torture, as well

as evidence supporting her well-founded fear of future harm. And the Tenth Circuit agrees. Exh. D. In granting her stay of removal, the Tenth Circuit necessarily found that Ms. Munoz demonstrated a likelihood of success on the merits of her petition for review pursuant to *Nken v. Holder*, 556 U.S. 418, 434 (2009). *Id.* Therefore, Ms. Munoz has a compelling claim to relief, which, if granted, would prohibit DHS from removing her to El Salvador.

74. In sum, the balance of the as-applied factors weigh in favor of finding Ms. Munoz's prolonged detention without a bond hearing unconstitutional.

B. The Appropriate Remedy for This Due Process Violation is Immediate Release; in the Alternative, Due Process Requires a Custody Hearing at which the Government Bears the Burden of Justifying Ms. Munoz's Ongoing Detention.

75. Releasing Ms. Munoz is the most appropriate means to remedy the ongoing due process violations here—her prolonged, continued detention without any relation to a legitimate government purpose. *See Malam v. Adducci*, 452 F. Supp. 3d 643, 661 (E.D. Mich. 2020), *as amended* (Apr. 6, 2020) (citing *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15–16 (1971) (“Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”)). Immediate release is contemplated when immigration detention becomes unlawful. *Zadvydas*, 533 U.S. at 701; *Mapp v. Reno*, 241 F.3d 221, 229 (2d Cir. 2001) (recognizing court's inherent power to order release of habeas petitioners from immigration detention).

76. In the alternative and at a minimum, due process requires a custody hearing for Ms. Munoz. *See Juarez*, 2024 WL 1012912, at *8 (“continued detention [under § 1231(a)] requires an individualized bond hearing before an immigration judge in order to comport with due process.”); *Daley*, 2023 WL 2336052, at *5; *Viruel Arias*, 2022 WL 4467245, at *3; *Sheikh*, 2022 WL 17075894, at *4.

77. At that custody hearing, the government must be required to justify Ms. Munoz's ongoing detention by clear and convincing evidence. Because "civil commitment for any purpose constitutes a significant deprivation of liberty," *Addington v. Texas*, 441 U.S. 418, 425 (1979), Ms. Munoz's ongoing detention constitutes a serious deprivation. See *Foucha v. Louisiana*, 504 U.S. 71, 75-76 (1992). Imposing this burden is also consistent with case law from around the country ordering bond hearings for detained individuals subject to prolonged detention in similar contexts.¹⁰ See, e.g., *Juarez*, 2024 WL 1012912, at *8 (recognizing that "placing the burden of proof on the government comports with due process requirements"); *Sheikh*, 2022 WL 17075894, at *4 (ordering an individualized bond hearing at which the government must bear the burden to establish "by clear and convincing evidence that continued detention is justified"); *Viruel Arias*, 2022 WL 4467245, at *3 (same); *Daley*, 2023 WL 2336052, at *5 (same); *Villaescusa-Rios*, 2021 WL 269766 at *5 (same); *German Santos*, 965 F.3d at 213 (same); *Pedro O.*, 543 F. Supp. 3d at 733 (same); *Duncan v. Kavanagh*, 439 F. Supp. 3d 576, 590–91 (D. Md. 2020) (same); *Diaz-Calderon v. Barr*, No. 2:20-cv-11235-TGB, 2020 WL 6585536, at *7–9 (E.D. Mich. Nov. 10,

¹⁰ In assessing which party should bear the burden of proof and what standard of proof should apply, courts have sometimes considered the three-factor balancing test proscribed in *Mathews v. Eldridge*. 424 U.S. 219, 222 (1976); see e.g., *Velasco Lopez*, 978 F.3d at 852; *Pedro O.*, 543 F. Supp. 3d at 741. Here, Ms. Munoz's position is further bolstered by an examination of the *Mathews* factors, wherein the Court must examine: (1) the importance of the interest at stake; (2) the risk of erroneous deprivation of the interest due to the procedures used and probable value of additional procedural safeguards; and (3) the government's interest. 424 U.S. at 222. The first factor overwhelmingly weighs in Ms. Munoz's favor given her liberty interest is at stake. See *Zadvydas*, 533 U.S. at 690. Second, should the Court rightfully find Ms. Munoz's detention has become prolonged, placing the burden on Respondents is an appropriate procedural safeguard. See *Velasco Lopez*, 978 F.3d at 852 (finding that at the second "stage in the *Mathews* calculus, the primary interest is not that of the Government but the interest of the detained individual.") (citation omitted). Third, Respondents' interest is served with the process provided by the individualized review contemplated. *Id.* at 844 (finding that requiring DHS to bear the burden "promotes the Government's interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose."). Thus, the burden to prove the legality of Ms. Munoz's detention should fall on Respondents.

2020) (ordering petitioner's immediate release due to the Government's failure, during petitioner's bond hearing, to demonstrate by clear and convincing evidence to justify continued detention); *Velasco Lopez*, 978 F.3d at 856–57 (affirming the clear and convincing burden of proof is on the government after prolonged detention under 1226(a)); *but see de Zarate*, 2023 WL 2574370, at *5 (ordering a bond hearing but declining to place the burden of proof on the government).

78. These courts have held that, under well-established Supreme Court precedent, when the government seeks to deprive someone of liberty, it bears the burden of proving that such deprivation is justified. *See, e.g., Diaz-Ceja*, 2019 WL 2774211, at *10 (D. Colo. July 2, 2019), *appeal dismissed*, No. 19-1321, 2019 WL 8128251 (10th Cir. Nov. 5, 2019).

79. DHS cannot meet a clear and convincing evidence burden to justify continued detention with unauthenticated evidence. *See Ruiz-Giel v. Holder*, 576 F. App'x. 739, 740–41, n.1 (10th Cir. 2014) (concluding that criminal records were properly admitted and met DHS' clear and convincing evidence burden because they were authenticated with a stamp by the state court of Nevada and included a certification from DHS); *Woldemeskel v. I.N.S.*, 257 F.3d 1185, 1192 (10th Cir. 2001) (noting favorably that the Immigration Judge and the BIA did not consider a document because it was not authenticated according to 8 C.F.R. § 287.6(a)–(b)); *Luna v. INS*, 53 F.3d 338, at *2 (9th Cir. 1995) (“[d]ue process requires that government forms admitted in deportation proceedings be authenticated”); 8 C.F.R. § 287.6(a) (“an official record or entry therein, *when admissible for any purpose, shall* be evidenced by an official publication thereof, or by copy attested by the official having legal custody of the record or by an authorized deputy) (emphasis added). It similarly cannot meet its burden by relying on antiquated criminal legal contacts that lack bearing on future dangerousness. *E.g., Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 398 (3d Cir. 1999) (“Due process is not satisfied . . . by rubberstamp denials based on temporally distant

offenses. The process due even to excludable [noncitizens] requires an opportunity for an evaluation of the individual's current threat to the community and his risk of flight"); *Quitizaca v. Barr*, No. 20-cv-403 (LJV), 2021 WL 6797494, at *5 (W.D.N.Y. Jan. 5, 2021) (same).

80. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 690. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

81. While the government may assert an interest in Ms. Munoz's continued detention pending her removal proceedings, this court need not weigh such considerations in determining the issue presented here—whether Ms. Munoz's prolonged, continued detention without a custody hearing violates due process. Rather, if the government has evidence regarding Ms. Munoz's risk of flight or danger to the community, it will be free to present it in a constitutionally proper bond hearing and the IJ, rather than this Court, will weigh such evidence accordingly in determining whether the government has met its burden. *Portillo v. Hott*, 322 F. Supp. 3d 698, 709 (E.D. Va. 2018) (finding that "the government's interest in guarding against Rodriguez's flight can be substantially protected even if Rodriguez is given an individualized bond hearing and released on bond because a critical factor that the IJ will be forced to consider is whether Rodriguez is a flight risk and whether there are conditions of release that could reasonably secure his future appearance"); *Hechavarria v. Sessions*, No. 15-CV-1058, 2018 WL 5776421, at *8 (W.D.N.Y. Nov. 2, 2018), enforcement granted sub nom. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227 (W.D.N.Y. 2019) (noting that the government's asserted interests in petitioner's continued detention due to his "serious criminal history and risk of flight," while "legitimate and

compelling,” were “the very interests that would be addressed at a [custody] hearing,” thus begging the question why a hearing was necessary) (citations omitted).

82. Finally, due process likewise prohibits the government from “imprisoning a defendant solely because of his lack of financial resources.” *Bearden v. Georgia*, 461 U.S. 660, 661 (1983); *see also Turner v. Rogers*, 564 U.S. 431, 447–48 (2011) (holding that due process requires specific findings as to an individual’s “ability to pay” before incarcerating him for civil contempt). Accordingly, due process requires consideration of a noncitizen’s ability to pay a bond and alternative release conditions. *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978); *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (concluding that due process likely requires “consideration of the [noncitizen’s] financial circumstances, as well as of possible alternative release conditions . . . to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring their appearance at future hearings”).

CLAIM FOR RELIEF

COUNT I

Violation of Fifth Amendment Rights to Procedural Due Process (Unreasonably Prolonged Detention)

99. Ms. Munoz repeats and re-states the allegations in the preceding paragraphs.

100. The Fifth Amendment’s Due Process Clause forbids the government from depriving any person of liberty “without due process of law.”

101. Ms. Munoz’s prolonged detention of over 16 months without receiving a bond hearing violates due process. Absent habeas relief, her detention will continue for months, if not years.

102. Due process requires that Ms. Munoz be released from detention, subject to appropriate conditions of release, or in the alternative, that she receive a bond hearing at which the

government bears the burden to justify further detention by clear and convincing evidence.

103. This Court should thus grant Ms. Munoz's petition for habeas corpus and order that Respondents either release her from detention or provide the process afforded under the Constitution.

PRAYER FOR RELIEF

WHEREFORE Ms. Munoz respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Enjoin Respondents from transferring Ms. Munoz outside of the jurisdiction of the District of Colorado pending the resolution of this case;
- c. Pursuant to 28 U.S.C. § 2243, issue an Order to Show Cause or Order to Answer ordering Respondents to show cause within three days why the writ should not be granted;
- d. Issue a writ of habeas corpus directing Respondents to release Ms. Munoz on her own recognizance or, in the alternative, provide her, within seven days of this Court's order, a constitutionally adequate, individualized bond hearing before an impartial adjudicator where: (1) DHS bears the burden of establishing by clear and convincing evidence that continued detention is justified; (2) the adjudicator is required to meaningfully consider alternatives to imprisonment such as community-based alternatives to detention including conditional release, parole, as well as Ms. Munoz's ability to pay a bond; (3) the adjudicator may not give undue weight to allegations underlying dismissed criminal charges; (4) the adjudicator may not place undue weight on unauthenticated or antiquated documents regarding alleged criminal legal contacts; and (5) the adjudicator must take into consideration Ms. Munoz's mental health diagnoses and trauma when

considering criminal legal contacts;

e. Award Ms. Munoz her costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any further relief as this Court deems just and proper.

Dated: March 28, 2025

s/ Colleen Cowgill
Colleen Cowgill
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Pro Bono Counsel for Petitioner

VERIFICATION

I, s/ Colleen Cowgill, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petitioner's Petition for Writ of Habeas Corpus are true and correct.

Dated: March 28, 2025

CERTIFICATE OF SERVICE

I, Colleen Cowgill, hereby certify that on March 28, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Colleen Cowgill, hereby certify that I have mailed a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on March 28, 2025.

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