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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.: 1:25-cv-01002

**PETITIONER'S MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

INTRODUCTION

It is well settled in this District that the government cannot indefinitely detain noncitizens while they wait years for their immigration case to be resolved without so much as a hearing to determine whether such detention is justified or necessary. *See, e.g., Juarez v. Choate*, No. 1:24-CV-00419-CNS, 2024 WL 1012912, at *8 (D. Colo. Mar. 8, 2024); *Martinez v. Ceja*, No. 24-CV-03056-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); *see also Son Vo v. Greene*, 109 F. Supp. 2d 1281 (D. Colo. 2000); *Gonzalez-Portillo v. Reno*, 2000 WL 33191534 (D. Colo. Dec. 20, 2000); *Martinez v. Greene*, 28 F. Supp. 2d 1275 (D. Colo. 1998). And yet that is precisely what has happened to Dayana Munoz Ramirez (“Ms. Munoz”)¹, a transgender woman who has been detained in conditions tantamount to penal confinement for 16 months – 505 days – with no end to her detention in sight.

Ms. Munoz moves for a temporary restraining order and preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65 against Dawn Ceja, in her official capacity as Warden of the Aurora Contract Detention Facility² (“Aurora facility”); Robert Guadian, in his

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.

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.

official capacity as Denver Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations (“ERO”) Interim Field Office Director; Kristi Noem, in her official capacity as Secretary of the U.S. Department of Homeland Security (“DHS”); Todd Lyons as Acting Director of ICE; and Pamela Bondi in her official capacity as the Attorney General of the U.S. Department of Justice. In the alternative, should the Court deny Ms. Munoz’s request for injunctive relief, at a minimum it should order Respondents to show cause within three days establishing why Ms. Munoz’s habeas petition should not be granted. Counsel for Ms. Munoz provided notice of her intent to file the accompanying habeas petition to counsel for Respondents at the U.S. Attorney’s Office for the District of Colorado on March 26, 2025.

FACTUAL BACKGROUND

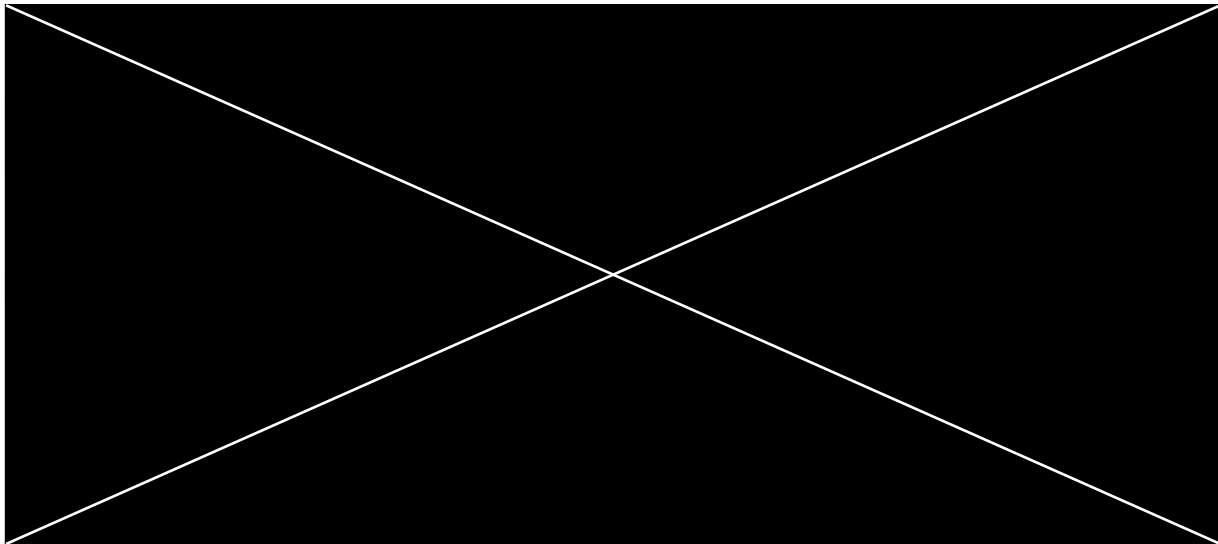
Ms. Munoz is a transgender woman who was born in El Salvador. Though she has known she does not identify with her assigned sex at birth since she was a child, she felt compelled to conceal her gender identity for most of her life for her own safety. Exh. A, Tab A at ¶¶ 5, 7.

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

After living in the United States for many years, around 2016, Ms. Munoz was placed in removal proceedings based on a 2006 conviction for unlawful taking of a vehicle. *Id.* 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 stopped speaking to her and her marriage ended. *Id.* at ¶¶ 11-13.

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 to the court while in removal proceedings. *Id.* at ¶ 16. Instead, she referred to herself by her birth name, Alfredo, and used he/him pronouns. The IJ denied her applications for relief, ordered removal, and in December 2018, Ms. Munoz was removed to El Salvador. *Id.* at ¶ 17.

After her removal, Ms. Munoz began living openly as a transgender woman and started publicly identifying as a woman in El Salvador, which placed her in grave gender. *Id.* at ¶ 17. Shortly after her deportation, she faced physical beatings and threats to her life at the hands of gang members because of her feminine appearance. *Id.* at ¶ 18.



Fearing for her life, Ms. Munoz fled El Salvador and re-entered the United States. *Id.* at ¶ 21. In November 2023, Ms. Munoz was taken into immigration custody and housed in a unit dedicated to transgender people. *Id.* at ¶ 22. At that time, DHS reinstated her prior removal order and placed her in withholding-only proceedings after she demonstrated a reasonable possibility of persecution in El Salvador in a reasonable fear interview. Unable to secure counsel while detained,

Ms. Munoz appeared *pro se* in her removal proceedings before the Immigration Judge. In April 2024, the IJ denied relief, followed by a written decision on May 16, 2024. Exh. B.

The IJ denied Ms. Munoz's applications for withholding of removal and CAT protection. 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 relief based on lack of corroboration, despite Ms. Munoz's submission of corroborating evidence. *Id.* at 11-12.

The IJ also denied withholding of removal, for the alternate reason that Ms. Munoz's 2006 unlawful-taking-of-a-vehicle conviction constituted a particularly serious crime. Exh. B at 8-10. She reached this conclusion without having any access to the underlying criminal records. *Id.* at 8-9. DHS did not submit relevant evidence, and Ms. Munoz, detained and *pro se*, 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.

Ms. Munoz timely appealed to the Board of Immigration Appeals (BIA) and thereafter obtained *pro bono* counsel to represent her on appeal. Exh. A, Tab A at ¶ 36. 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 upheld the overall conclusion on credibility. *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 timeline of Ms. Munoz's removal to El Salvador and subsequent harm, 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.

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 remand for further evaluation of credibility and applications for relief. *Id.* In particular, the dissent stated it was clear error for the IJ to characterize the timing of when Ms. Munoz began identifying as transgender as implausible. *Id.* Ms. Munoz repeatedly stated she was not certain about the dates she came out to her family but recalled that it was around the time of her proceedings. *Id.* The dissent found it "entirely plausible that an individual would not reveal her transgender identity in a court proceeding that occurred only 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.*

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 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.

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.*

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.

All the while, Ms. Munoz remains detained by DHS for over 16 months. 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.

Ms. Munoz is regularly subjected to degrading comments, catcalling, and other forms of harassment by cisgender men in detention whenever she leaves her pod. Exh. G at ¶ 10. Despite

her efforts to avoid these encounters, she is unable to escape the persistent harassment that follows her throughout the facility. *Id.*

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 was not possible, 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.*

Ms. Munoz has also faced severe medical neglect while detained. 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 several 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.*

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.*

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 the 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.

Ms. Munoz's prolonged detention – now exceeding 505 days – without an individualized bond hearing is unconstitutional. As detailed in Ms. Munoz's contemporaneously filed Petition for Writ of Habeas Corpus, she seeks judicial review of her continued unlawful detention. She is likely to succeed on the merits of her petition. Ms. Munoz 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.

LEGAL STANDARD

Federal Rule of Civil Procedure 65 requires a movant for a temporary restraining order to show that: (i) they will suffer irreparable harm unless the injunction is issued; (ii) they have a substantial likelihood of prevailing on the merits; (iii) the threatened injury outweighs any harm that the preliminary injunction may cause the opposing party; and (iv) the injunction will not adversely affect the public interest. *Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016).

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

Where an injunction alters the status quo, movants must “make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms.” *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 237 F. Supp. 3d 1126, 1130 (D. Colo. 2017), *aff’d*, 916 F.3d 792 (10th Cir. 2019) (quotation omitted); *see Essien v. Barr*, 457 F. Supp. 3d 1008, 1012–13 (D. Colo. 2020) (dismissing the “mandatory versus prohibitory” distinction and agreeing that a “strong showing” must be made for a detained immigrant to win a preliminary injunction). Courts cannot require that the factors weigh “heavily and compellingly” in a movant’s favor; the Tenth Circuit “jettisoned the heavily-and-compellingly requirement over a decade ago.” *Free the Nipple-Fort Collins*, 916 F.3d at 797 (citations and brackets omitted). Instead, a movant in this posture must merely make a “strong showing.” *Id.*

The Court likewise has independent authority under habeas corpus, 28 U.S.C. § 2241, to order the immediate release of detained persons from unconstitutional confinement.

I. Ms. Munoz Will Suffer Irreparable Harm in the Absence of a Temporary Restraining Order.

Ms. Munoz suffers irreparable harm each day she remains detained without a constitutionally adequate bond hearing from a neutral adjudicator who assesses whether her continued confinement is necessary. The harm suffered is imminent and ongoing; it is “certain, great, and not theoretical.” *Heidman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). “Irreparable harm, as the name suggests, is harm that cannot be undone, such as by an award of compensatory damages or otherwise.” *Salt Lake Tribune Publ’g Co., LLC v. AT&T Corp.*, 320 F.3d 1081, 1105 (10th Cir. 2003).

The violation of an individual’s constitutional rights is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976). Indeed, “[m]ost courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.” *Free the Nipple-*

Fort Collins, 916 F.3d at 805–06 (citing *Awad v. Ziriox*, 670 F.3d 1111, 1131 (10th Cir. 2012)); *Connecticut Dept. of Environmental Protection v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) (“[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury.”) (internal quotations and citations omitted).

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs.” *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (“[t]he deprivation [] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others outside normal visiting hours. The use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone”); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing in “concrete terms the irreparable harms imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on [persons in detention] and their families as a result of detention, and the collateral harms to children of [persons in detention] whose parents are detained”).

Underscoring this harm, the government itself documented alarmingly poor conditions in ICE detention centers.⁴ Nevertheless, years after the Inspector General’s report revealing systemic

⁴ See, e.g., DHS, Office of Inspector General (“OIG”), *DHS OIG Inspector Cites Concerns with [Noncitizen] Treatment and Care at ICE Detention Facilities* (2017) (reporting instances of invasive procedures and substandard care; mistreatment, such as indiscriminate strip searches; long waits for medical care and hygiene products; expired, moldy and spoiled food; and detained persons being held in administrative segregation for extended periods without documented, periodic reviews required to justify continued segregation) available at: <https://www.oig.dhs.gov/news/press-releases/2017/12142017/dhs-oig-inspection-cites-concerns-detainee-treatment-and-care>.

mistreatment, individuals like Ms. Munoz continue to suffer in ICE custody. 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.⁵ Respondents are on notice of the inadequate medical and mental health care available at the Aurora facility and yet they fail to mitigate the violations of DHS' own detention standards.⁶

⁵ See e.g., Rocky Mountain Immigrant Advocacy Network (RMIAN), National Immigration Project (NIP), American Immigration Council (AIC), "Complaint Detailing Abusive Overuse of Solitary Confinement and Mistreatment that Disproportionately Impacts Persons with Disabilities at the Aurora Contract Detention Facility," July 13, 2023, available at: <https://static1.squarespace.com/static/57f6bd842e69cf55d8158641/t/64b04e1c58a77f267f9c274a/1689275933856/Solitary+Confinement+Complaint+-+FINAL+7.13.23.pdf> (last accessed Dec. 18, 2023); 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 [hereinafter AIC 2022 Complaint]; 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.").

⁶ See AIC 2022 Complaint, *supra* n. 4; AIC/AILA 2019 Complaint, "Supplement—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility," (Jun. 11, 2019) available at: https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf; AIC/AILA 2018 Complaint, "Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver

Ms. Munoz's experience at the Aurora facility exemplifies the harm occurring there. Throughout her time in detention, ICE has failed to provide her with adequate medical and mental health care. Exh. G at ¶¶ 11-12, 14. For example, Ms. Munoz has been severely struggling with eating for over one year now because she lost a dental bridge that holds her four front teeth. *Id.* at ¶ 14. She was informed it would only take six months to receive a new bridge, but more than a year has passed with no treatment. *Id.* Further, her mental health has severely deteriorated in detention. *Id.* at ¶¶ 11, 12. Ms. Munoz struggles with anxiety and a sleeping disorder. A recent attempt to treat her anxiety resulted in 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.*

Ms. Munoz also faces daily harassment by detained cisgender men whenever she leaves her pod. Exh. G at ¶ 10. Despite her efforts to avoid these encounters, she is unable to escape the persistent harassment that follows her throughout the facility. *Id.* She has also been subjected to threats and intimidation by detention staff. *Id.* 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.* When explaining that moving her into that unit would endanger her, the staff member dismissed Ms. Munoz's 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.*

Ms. Munoz is now at greater risk of harm due to implementation of Executive Order 14166,

Contract Detention Facility,"⁶ (Jun. 4, 2018) *available at*: http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf.

which 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. The order also requires the Bureau of Prisons to eliminate federal funding for gender-affirming medical care in detention. While Ms. Munoz has not yet been impacted by the policy changes, the risk of being transferred to a facility that does not align with her gender identity and losing access to medical care is critical. Without this Court's intervention, she faces a substantial risk of suffering irreparable harm.

Ms. Munoz's continued detention is an ongoing violation of her constitutional rights, and her deprivation of liberty is substantially detrimental to her well-being. The continuation of these grave harms can only be prevented if the Court grants this preliminary injunction; this factor therefore weighs heavily in Ms. Munoz's favor.

II. Ms. Munoz Has a Substantial Likelihood of Success on the Merits of Her Underlying Petition.

When assessing this prong of the test, the appropriate standard is a "reasonable likelihood" of success and nothing more. *Dine Citizens Against Ruining Our Environment*, 839 F.3d at 1282; 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.").

Here, Ms. Munoz's claim is likely to succeed because her continued detention without neutral review contravenes due process. The District Court of Colorado applies a six-factor test when analyzing whether a noncitizen's detention has become unconstitutionally prolonged. Those factors include:

- (1) the total length of detention to date;

- (2) the likely duration of future detention;
- (3) the conditions of confinement;
- (4) delays in the removal proceedings caused by the person in immigration custody;
- (5) delays in the removal proceedings caused by the government; and
- (6) the likelihood that 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*, 2023 WL 2336052, at *6; *Viruel Arias*, 2022 WL 4467245, at *2; *Sheikh*, 2022 WL 17075894, at *3; *Singh*, 2021 WL 2290712, at *4; *Villaescusa-Rios v. Choate*, No. 20-CV-03187 (CMA), 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021).

First, ICE has already detained Ms. Munoz for over 16 months, a longer period than other cases in which this Court has granted habeas relief. *Daley*, 2023 WL 2336052, at *3 (fourteen months); *Viruel Arias*, 2022 WL 4467245, at *2 (fourteen months); *Sheikh*, 2022 WL 17075894, at *3 (thirteen months); *see also Galan-Reyes v. Acoff*, 460 F. Supp. 3d 719, 721 (S.D. Ill. 2020) (eight months); *Vargas*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019) (nine months); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (seven months).

Second, Ms. Munoz is likely to succeed on the merits because her already prolonged detention is certain to continue for many months, if not years, while the Tenth Circuit adjudicates her case, as well as any further appeals or remanded proceedings. In analogous cases, this Court has found that this factor weighed in favor of the petitioner. For example, in *Villaescusa-Rios*, 2021 WL 269766 at *3, this Court wrote that, “Courts examine the anticipated duration of all removal proceedings—including administrative and judicial appeals—when estimating how long detention will last. . . . There is a significant probability that [the petitioner’s] detention will continue both during the pendency [of] DHS’s appeal before the BIA and throughout the course of a judicial appeal by either side. Therefore, her detention will definitely terminate at some point, but that point is likely to be many months or even years from now.” (internal citations and

quotation marks omitted). Ms. Munoz currently has two petitions for review pending before the Tenth Circuit, where abatement was recently lifted and a briefing schedule is pending. Even if she wins her appeal at the Tenth Circuit, which could take several months, her case will be far from over. Instead, she will have to wait for the Tenth Circuit to remand her case to the BIA, and for the BIA to remand her case back to an IJ for continued proceedings. Thus, Ms. Munoz faces additional months or years of civil incarceration absent this Court's intervention.⁷

Third, this Court has already held that the location of Ms. Munoz's incarceration weighs in her favor because it is akin to a penal institution; thus, she is likely to succeed on this factor. *de Zarate*, 2023 WL 2574370, at *4 (“[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); *Martinez*, 2024 WL 5168143, at *5 (“... 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

⁷ In *Guzman Chavez*, Justice Breyer noted in his dissent that “[s]tudies have found that this procedure often takes over a year, with some proceedings lasting well over two years before eligibility for withholding-only relief is resolved.” 141 S. Ct. at 2294–95 (2021) (Breyer, J., dissenting) (citing Hausman, ACLU Immigrants’ Rights Project, Fact-Sheet: Withholding-Only Cases and Detention 2 (Apr. 19, 2015), https://www.aclu.org/sites/default/files/field_document/withholding_only_fact_sheet_-_final.pdf *2295 (finding an average length of detention of 114 days when neither party appealed the IJ’s final decision, 301 days when at least one party appealed and the BIA rendered a final decision, and 447 days when the BIA remanded the case and the immigration judge made a final decision); *Martinez v. Larose*, 968 F.3d 555, 558 (C.A.6 2020) (noncitizen detained for over 28 months while awaiting withholding-only relief eligibility determination)). Justice Breyer further noted that “once withholding-only relief is granted, the [noncitizen] is ordinarily not sent to another, less dangerous country. Rather, the [noncitizen] typically remains in the United States for the foreseeable future.” (citing American Immigration Council & National Immigrant Justice Center, *The Difference Between Asylum and Withholding of Removal* 7 (Oct. 2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_difference_between_asylum_and_withholding_of_removal.pdf) (finding that only 1.6% of noncitizens granted withholding-only relief were ever actually removed to an alternative country)).

of penal confinement”); *Sheikh*, 2022 WL 17075894 at *4 (same); *Singh*, 2021 WL 2290712 at *3–4 (same); *Villaescusa-Rios*, 2021 WL 269766 at *4 (determining that “conditions of Petitioner’s confinement weigh strongly in favor of a bond hearing”).

Next, Ms. Munoz is likely to succeed on the merits of her petition because she has diligently litigated her case and has not engaged in dilatory tactics. *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. As a *pro se* litigant, Ms. Munoz diligently prepared her application for relief, including gathering evidence to support her claim while in detention. Exh. A, Tab A at ¶ 28. When the IJ denied relief, Ms. Munoz timely filed a *pro se* Notice of Appeal, requested one 21-day briefing extension, and quickly found *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*, Cas No. 24-9572, Dkt. 1. Further, she timely filed a motion to reopen before the BIA, which included new and previously unavailable record 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. As such, Ms. Munoz pursued her rights diligently and did not delay her removal proceedings. Therefore, this factor weighs in favor of finding Ms. Munoz’s continued detention unreasonable.⁸

Finally, Ms. Munoz’s removal from the United States is unlikely. Ms. Munoz has a strong claim for withholding of removal and protection under the Convention Against Torture based on the likelihood that she will be persecuted and tortured in El Salvador due to her gender identity.

⁸ Regarding the fifth factor, counsel is not aware of any unreasonable delays caused by the government in this case.

See Exh. A. She is likely to prevail on her claim, which, if granted, would foreclose any possibility of removal.

As detailed in her petition, Ms. Munoz suffered severe persecution and torture 
 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.* When she sought help from the police, they explicitly stated that they would not help her because she is a transgender woman. *Id.*

Ms. Munoz also submitted robust country conditions evidence documenting widespread, systemic, state-sponsored violence against LGBTQIA+ individuals in El Salvador—particularly against transgender women. Exh. A, Tab A at ¶ 28. 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).

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

III. Balance of Equities and Public Interest Weigh Heavily in Ms. Munoz’s Favor.

The third and fourth factors tip strongly in Ms. Munoz’s favor. Where, as here, the government is a party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Bd. of Cty. Commissioners of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, No. 18-CV-01672 (WJM-SKC), 2019 WL 4926764, *7 (D. Colo. Oct. 7, 2019).

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.*, 129 S. Ct. 365, 376 (2008). “When a constitutional right hangs in the balance,” it “usually trumps any harm to the defendant.” *Free the Nipple-Fort Collins*, 916 F.3d at 806. *Cf. Awad*, 670 F.3d at 1131 (“[W]hen the law that voters wish to enact is likely unconstitutional, their interests do not outweigh [a Petitioner’s interest] in having his constitutional rights protected”). The “public interest is best served by ensuring the constitutional rights of person within the United States.” *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *13 (S.D.N.Y. 2018) (internal citation omitted); *Free the Nipple-Fort Collins*, 237 F. Supp. 3d at 1134 (it is “always in the public interest to prevent the violation of a party’s constitutional rights”) (citing *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998); *Stawser v. Strange*, 44 F. Supp.3d 1206, 1210 (S.D. Ala. 2015)).

In granting a temporary restraining order related to unlawful immigration detention, the District of Colorado noted that requiring ICE’s “compliance with the law serves the public interest.” *Andujo-Andujo v. Longshore*, 2014 WL 2781163 at *6 (D. Colo. June 19, 2014). 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*, 2023 WL 2744397 at *7 (noting the administrative burden of a bond hearing is minimal when weighed against a petitioner’s severe hardships); *Xuyue Zhang*, 612 F. Supp. 3d at 1017 (“[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.”).

Here, the balance of harms and public interest both weigh heavily in Ms. Munoz’s favor. Ms. Munoz requests the most basic of due process protections – an individualized hearing to

determine whether her continued detention is justified and necessary. Absent such a hearing, Ms. Munoz remains indefinitely detained in conditions akin to criminal confinement where she fears for her safety, receives inadequate medical and mental healthcare, and where she is separated from her community. *See, e.g., Wingo*, 407 U.S. at 532–33; *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (noting that the government “cannot suffer harm from an injunction that merely ends an unlawful practice”); *Velasco Lopez*, 978 F.3d at 850; *Black v. Decker*, 103 F.4th 133, 154 (noting that “where a noncitizen poses no danger and is not a flight risk, all the government does in requiring detention is separate families and remove from the community breadwinners, caregivers, parents, siblings and employees.”) (cleaned up).

Ms. Munoz has experienced substantial harm in El Salvador. She has been subjected to  by both police and gang members on account of her gender identity. Exh. A, Tab A at ¶¶ 16-21. The fact that these experiences occurred on completely separate occasions by several unrelated actors within a span of less than six months underscores the pervasive and inescapable nature of the harm she faces. *Id.* Beyond the significant harm to herself, Ms. Munoz reports that her continued detention has worsened her physical and mental health conditions, and the detention facility does not provide adequate mental health resources. Exh. G at ¶¶ 11.

Ms. Munoz’s suffering is particularly egregious given Respondents never provided a constitutionally adequate bond hearing at which DHS was required to show by clear and convincing evidence that her continued detention is justified. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring) (recognizing that the only permissible purpose of civil, immigration detention is to prevent flight and dangers to the community). Any alleged concerns raised by Respondents about flight risk or danger are ameliorated through the imposition of minimal

supervision requirements that do not require Ms. Munoz's indefinite detention. *See Thakker v. Doll*, 451 F.Supp.3d 358, 371 (M.D. Pa. 2020) ("We note that ICE has a plethora of means other than physical detention at their disposal by which they may monitor [persons civilly detained] and ensure that they are present at removal proceedings, including remote monitoring and routine check-ins."); *Hernandez*, 872 F.3d at 991 (observing that one of ICE's alternatives to detention programs, the Intensive Supervision Appearance Program, "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings").

DHS regularly decides not to detain individuals in removal proceedings. Approximately 98 percent of people subject to removal proceedings are not incarcerated by DHS, thus, the agency has extensive experience monitoring people who have pending immigration cases.⁹ DHS also frequently releases persons who otherwise would be subject to mandatory detention. *Franco-Gonzalez*, No. CV 10-02211 DMG DTBX, 2013 WL 3674492, at *20 (C.D. Cal. Apr. 23, 2013) (affording individualized bond hearings after six months of detention to class members even when mandatory detention would otherwise apply).

Similarly, EOIR's non-detained docket far exceeds the number of cases on its detained docket. As of November 2024, nearly 3.6 million cases were pending before U.S. immigration courts.¹⁰ In contrast, at the end of Fiscal Year 2024, ICE held 37,684 people in custody.¹¹ Even assuming every person in ICE custody has a case pending before EOIR, that would mean only

⁹ Congressional Research Service, *Immigration: Alternatives to Detention (ATD) Programs*, July 8, 2019, available at: <https://fas.org/sgp/crs/homesecc/R45804.pdf>.

¹⁰ Congressional Research Service, *Immigration Courts: Decline in New Cases at the End of FY2024*, available at: <https://crsreports.congress.gov/product/pdf/IN/IN12463#:~:text=The%20number%20of%20pending%20cases,the%20court%20backlog%20has%20slowed.>

¹¹ ICE, *Fiscal Year 2024 Annual Report*, available at: <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

about 1 percent of cases currently pending before EOIR are on a detained docket. Transferring Ms. Munoz's to the non-detained docket is not burdensome.

Given there is no countervailing government or public interest in Ms. Munoz's continued detention, she makes a strong showing that both the balance of harms and the public interest weigh in her favor. *Cf. Black v. Decker*, 103 F.4th at 154 (finding no public interest in the prolonged detention of those who are neither dangerous nor a risk of flight).

IV. In the Alternative, This Court Should Enjoin Respondents from Transferring Ms. Munoz Out of This District During the Pendency of This Case.

If the Court does not grant preliminary injunctive relief compelling Respondents to afford Ms. Munoz an individualized bond hearing, Ms. Munoz respectfully requests that, at a minimum, this Court enjoin Respondents from transferring her outside the District of Colorado during the pendency of her underlying habeas case. In a recent case in this district, *Fuentes v. Choate*, 2024 WL 2978285 (D. Colo. June 13, 2024), the respondents transferred the petitioner to an ICE facility in Arizona one day before she was able to get her habeas petition on file with this Court, thus frustrating this Court's exercise of jurisdiction. In order to preserve this Court's jurisdiction over this matter, facilitate judicial review of Ms. Munoz's significant constitutional claims, and preserve judicial resources by avoiding the necessity of refiling this case elsewhere, Ms. Munoz respectfully asks this Court enjoin her transfer outside this district during the pendency of this case.

CONCLUSION

Based on the foregoing, Ms. Munoz respectfully requests that this Court grant the motion for a temporary restraining order. In the alternative, Ms. Munoz asks this Court to order

Respondents to show cause within three days establishing why her habeas petition should not be granted.

Dated: March 28, 2025

s/Colleen Cowgill

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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 Motion for a Temporary Restraining Order 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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