IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

DAYANA MUNOZ RAMIREZ, *Petitioner,* *v.* DAWN CEJA, *et al.*, *Respondents.*	Case No. 1:25-cv-01002-RMR

REPLY IN SUPPORT OF PETITION FOR A WRIT OF HABEAS CORPUS AND TEMPORARY RESTRAINING ORDER

Petitioner, Dayana Munoz Ramirez ("Ms. Munoz"), has been detained by ICE under 8 U.S.C. § 1231(a) for more than 17 months without ever receiving a bond hearing to determine whether her continued detention is justified. In its Response, Respondents ignore caselaw addressing these issues, misrepresent precedent and the record in Ms. Munoz's case, and rehash rejected arguments. These arguments are unpersuasive, and this Court should grant Ms. Munoz's motion for Temporary Restraining Order (TRO), compelling Respondents to order her immediate release, or in the alternative, order a custody hearing before a neutral adjudicator where the burden is on the government to justify her detention by clear and convincing evidence.

ARGUMENT

As set forth in her motion for TRO and petition for habeas corpus, Ms. Munoz has demonstrated that the TRO factors weigh in her favor, warranting a grant of relief. ECF No. 1, 2.

I. Ms. Munoz is likely to succeed on the merits of her claim.

Ms. Munoz asks this Court to apply well-settled precedent to the facts of her case. In stark contrast, Respondents urge this Court to abandon that precedent and ignore the myriad of cases that overwhelmingly support Ms. Munoz's litigation position. ECF No. 10 at 6-9. Their efforts are unpersuasive, and Ms. Munoz is likely to succeed on the merits.

a. This Court should apply the six-factor balancing test when analyzing Ms. Munoz's due process challenge.

Respondents contend that this Court "should not adopt and apply the six-factor test to assess" Ms. Munoz's due process challenge, ECF No. 10 at 6, and should instead analyze her detention under the standard set forth in *Zadvydas v. Davis,* 533 U.S. 678 (2001). Respondents insist that because Ms. Munoz is detained pursuant to § 1231(a), this Court should decline to apply the multi-factor balancing test it routinely utilizes to assess whether a noncitizen's prolonged mandatory detention violates due process. ECF No. 10 at 6-9.

As an initial matter, Respondents articulate no meaningful distinction between § 1231(a) and § 1226(c) as relevant here. Both statutes provide for the mandatory detention of noncitizens without access to neutral review. *Compare* 8 U.S.C. § 1226(c) (stating that the "Attorney General *shall* take into custody" any noncitizen who falls into one of the enumerated categories), *with* 8. U.S.C. § 1231(a) (stating that the "Attorney General *shall* detain" the noncitizen "during the removal period") (emphasis added). In both contexts, noncitizens face prolonged deprivation of liberty with limited procedural safeguards—making the constitutional concerns functionally indistinguishable.[1]

Further, numerous courts—including this one—have recognized that the six-factor test is appropriate to assess prolonged detention claims arising under § 1231(a). In *Juarez v. Choate*, for example, a court in this District considered the same issue raised here. No. 1:24-CV-00419-CNS,

[1] Respondents argue that Ms. Munoz was afforded "ample process," citing custody reviews carried out by ICE. ECF No. 10 at 11-12. However, as courts have recognized, "it is, at best, doubtful whether ICE's periodic custody reviews satisfy the Fifth Amendment's due process demands." *Juarez*, 2024 WL 1012912, at *5; *see also Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 227 (3d Cir. 2018) ("The DHS regulations that implement the Government's detention authority under § 1231(a)(6) themselves 'raise serious constitutional concerns.'"); *Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *4 (S.D.N.Y. Feb. 6, 2023) (finding that ICE custody reviews carried out pursuant to § 1231(a) "suffer from significant shortcomings"). Further, the Supreme Court in *Zadvydas* noted that "the Constitution may well preclude granting 'an administrative body the unreviewable authority to make determinations implicating fundamental rights.'" 533 U.S. at 692. These factors cast serious doubt on the sufficiency of process afforded to Ms. Munoz in these ICE custody reviews.

2024 WL 1012912, (D. Colo. Mar. 8, 2024). In that case, Respondents raised similar arguments that the six-factor test was developed explicitly for use in the § 1226(c) context and thus inapplicable to § 1231(a) claims. *Id.* The Court rejected those arguments, finding "there appears to be little substantial distinction between the liberty interest of noncitizens detained pursuant to § 1226(c) and § 1231 because 'regardless of the stage of the proceedings, the same important interest is at stake—freedom from prolonged detention.'" *Id.* at 6 (internal citations omitted). Following *Juarez*, this Court similarly noted that "the six-factor prolonged detention analysis would have been applicable" if the Petitioner was detained under § 1231. *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024).

Several courts have similarly found that a balancing test, rather than *Zadvydas*, is appropriate when a noncitizen is detained pursuant to § 1231 and raises a due process challenge. ECF No. 1 at ¶ 52. Indeed, at oral argument in *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022), the government itself acknowledged that, for as-applied constitutional challenges like the one raised here, courts would consider a multi-factor test exactly like the one this Court applies in § 1226(c) cases. Tr. of Oral Arg. in Arteaga-Martinez, 596 U.S. 573, 1/11/2022, at 16-17.

Respondents cite several cases to support their position. ECF No. 10 at 7-8. However, their arguments are flawed and the cases are distinguishable from Ms. Munoz's claim.

For example, Respondents cite to *Martinez v. Larose*, 968 F.3d 555 (6th Cir. 2020), to support their position. ECF No. 10 at 7. However, *Martinez* was decided before the Supreme Court's decision in *Johnson v. Arteaga-Martinez*, which explicitly left open the availability of as-applied constitutional challenges. *See* 596 U.S. at 583. Indeed, in *Castaneda v. Perry*, also relied on by Respondents, the Fourth Circuit "assumed" without deciding that as-applied constitutional challenges "may proceed outside the *Zadvydas* framework when the [noncitizen] presents [...]

exceptional circumstances." 95 F.4th 750, 760 (4th Cir. 2024) (citing *Arteaga-Martinez*, 596 U.S. at 583). Further, the Petitioner in *Castaneda* was previously afforded a bond hearing under then-existing caselaw and, through his habeas petition, sought a second bond hearing once his detention became prolonged. 95 F.4th at 753. Such circumstances do not exist here. And finally, in *G.P. v. Garland*, also discussed by Respondents, the sole remedy sought by Petitioner was release, not a bond hearing, and the Petitioner raised *only* a statutory *Zadvydas* claim, not a constitutional one. 103 F.4th 898, 903-04, n.3 (1st Cir. 2024) (noting that "G.P. challenges his detention under only *Zadvydas*" and as such "we need not consider any constitutional claim"). Contrary to Respondents position, the court in *G.P.* did not even address the six-factor test. ECF No. 10 at 8.

Accordingly, this Court should apply the six-factor balancing test to assess whether Ms. Munoz's prolonged detention has become unconstitutional. Courts in this District routinely apply this test to analyze due process claims challenging mandatory detention provisions.

b. Under the six-factor test, Ms. Munoz's prolonged detention without a bond hearing is unconstitutional.

Respondents further assert that even if the six-factor balancing test applies, it favors the government. ECF No. 10 at 11-14. This contention is unsupported by fact or law.[2]

As to the first and second factors, the government argues that the length of Ms. Munoz's detention is not unreasonable because "her detention has a definite end point." ECF No. 10 at

[2] Respondents include a recitation of Ms. Munoz's alleged criminal convictions. ECF No. 10 at 2. However, Respondents offer no evidence, much less authenticated evidence, supporting these allegations aside from a declaration from an ICE deportation officer that makes no reference as to how the information was verified or obtained. Similarly, Respondents assertions as to Ms. Munoz's alleged gang affiliation involve issues that are currently under review in her Tenth Circuit proceedings. Ms. Munoz has repeatedly denied any gang affiliation. *See* ECF No. 1-1, p. 60. In its most recent decision on her motion to reopen, the Board of Immigration Appeals (BIA) noted that the evidence Ms. Munoz submitted with her motion demonstrated "clear error in the [IJ's] adverse credibility finding" and that reopening would have been warranted but for the issue of whether the evidence was timely submitted. ECF No. 1-1, p. 447.

13. This argument is fundamentally flawed. First, many courts, including in this District, have routinely found shorter lengths of detention unconstitutionally prolonged. ECF. No. 1, ¶ 57. As to the second factor, the relevant inquiry is not whether Ms. Munoz's detention is "indefinite." Rather, the second factor considers "the likely duration of future detention," including any appeals and subsequent proceedings. *Villaescusa-Rios v. Choate*, 2021 WL 269766, at *3 (D. Colo. 2021). Here, Ms. Munoz's 17-month detention will continue for many months, if not years, while the Tenth Circuit adjudicates her case, as well as any further appeals or remanded proceedings. The fact that her already prolonged detention is guaranteed to continue well beyond the present only underscores the constitutional violation. Thus, both the first and second factors weigh in Ms. Munoz's favor.

Next, Respondents argue that this Court should not consider Ms. Munoz's conditions of detention because they "should be challenged through civil action, not a habeas petition." ECF No. 10 at 13. Ms. Munoz is not "challenging" the conditions of her confinement but rather its fact and duration. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Fuentes v. Choate*, No. 24-CV-01377-NYW, 2024 WL 2978285, at *3 (D. Colo. June 13, 2024). And in doing so, Ms. Munoz is simply applying the six factors this Court considers when determining whether additional due process protections must be afforded. *Daley v. Choate,* No. 22-CV-03043-RM, 2023 WL 2336052, at *2-3 (D. Colo. Jan. 6, 2023) (collecting cases). As detailed in Ms. Munoz's petition and TRO, DHS detains her at the Aurora facility, where evidence overwhelmingly establishes conditions akin to punitive confinement. ECF No. 1 at ¶¶ 61-67. As such, the third factor weighs strongly in Ms. Munoz's favor.

The fourth factor also weighs in Ms. Munoz's favor because she did not cause delays in her removal proceedings. ECF No. 1 at ¶¶ 69-70. Respondents argue that she has "caused most—

if not all of the delays" herself because she requested two extensions, one continuance,[3] and stays of removal. ECF No. 10 at 13-14. Here, too, Respondents' argument is flawed. Ms. Munoz has not engaged in "dilatory tactics" but has instead diligently pursued her legal rights, a decision that cannot be held against her. *See* ECF No. 1 at ¶ 69; *see also Zarate v. Choate*, No. 23-CV-00571-PAB, 2023 WL 2574370, at *4 (D. Colo. Mar. 20, 2023) ("[T]he Court will not hold her efforts to seek relief through the available legal channels against [a noncitizen]."). Penalizing her for non-frivolously litigating her case runs contrary to law and this factor favors Ms. Munoz.[4]

Lastly, Respondents' assertion that the last factor – the likelihood that proceedings will result in removal – favors Respondents solely because "a final order of a removal exists" mischaracterizes the legal standard and the record in this case. ECF No. 10 at 14. Ms. Munoz has a strong claim for withholding of removal and CAT protection, which, if granted, would prevent her removal to El Salvador – the only country ICE has identified as a possible country of removal. ECF No. 1 at ¶¶ 71-74. In *Johnson v. Guzman Chavez*, Justice Breyer noted in his dissent 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." 594 U.S. 523, 552-553 (2021) (Breyer, J., dissenting) (citing American Immigration Council & National Immigrant Justice Center, The Difference Between Asylum and Withholding of Removal (Oct. 2020) (finding that only 1.6% of noncitizens granted withholding-only relief were ever actually removed to an alternative country)). Thus, Respondents' argument that "even if [Ms. Munoz] is granted withholding-only relief, she may

[3] Before the immigration judge (IJ) and while appearing pro se, Ms. Munoz requested two brief continuances. This included one two-week extension to prepare her application for relief and a second one-week extension to correct defects in her evidentiary submission. ECF No. 1-1, p. 419. When the IJ denied her application, she filed a pro se appeal to the BIA and requested one 21-day extension to seek and secure pro bono counsel, which she successfully did. These brief continuances to pursue her legal rights, together amounting to roughly a month, do not justify her prolonged, ongoing detention of 17-months without access to a bond hearing.

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

still be removed at any time to another country," ECF No. 10 at 14, is unpersuasive and this factor weighs in her favor.

In sum, the six-factor test weighs in Ms. Munoz's favor and compels a finding that her continued prolonged detention without a bond hearing is unconstitutional.

c. Even if this Court applies the standard set forth in *Zadvydas*, Ms. Munoz's prolonged detention violates due process.

For the reasons set forth in her petition and as described above, Ms. Munoz maintains that her due process challenge should be analyzed under the six-factor test routinely used in this District. However, if this Court applies the test set forth in *Zadvydas*, Ms. Munoz has established that her removal is not reasonably foreseeable, and as such, she warrants release.

While Respondents argue that Ms. Munoz's detention has a "definitive termination point," they fail to identify when that point will occur—a few months from now? A year? Two years? Respondents cannot say. Ms. Munoz's case is now pending at the Tenth Circuit, where a decision could take months, or years, and where further proceedings, including appeals or remands, are likely. It is all but certain that she faces many more months or years of detention absent this Court's intervention. Further, as discussed above, she has a strong claim for withholding of removal and CAT protection and is likely to prevail, an outcome that would foreclose any possibility of removal. ECF No. 1 at ¶¶ 71-74.

The Court in *Zadvyas* specifically noted that the noncitizen need not show "the absence of any prospect of removal—no matter how unlikely or unforeseeable," but merely that removal is not reasonably foreseeable. 533 U.S. at 702. The Court also noted that "as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701. As such, courts have recognized that "[o]ne can hardly argue that detaining noncitizens for potentially as long as fifteen months is permissible in the

withholding context when the Court has explicitly expressed its belief that 'Congress previously doubted the constitutionality of [post-removal period] detention for more than six months.'" *Al-Sadoon v. Lynch*, 586 F. Supp. 3d 713, 727 (E.D. Mich. 2022).

Ms. Munoz's 17-month detention is nearly three times as long as what the Supreme Court considered "presumptively reasonable" and her removal is unlikely to occur in the reasonably foreseeable future. As such, this Court must order her release.

II. The remaining TRO factors favor Ms. Munoz.

Contrary to Respondents' contentions, ECF No. 10 at 15, each of the TRO factors favor Ms. Munoz and she warrants relief. As discussed above, Ms. Munoz has a likelihood of prevailing on the merits of her habeas petition. Regarding the second TRO factor, a 525-day (and ongoing) imprisonment constitutes a deprivation of liberty sufficing to show irreparable harm. As discussed above, Ms. Munoz has established a due process violation, which amounts to an irreparable injury. ECF No. 2 at 10-14. Respondents fail to rebut these arguments.

Turning to the balance of equities and public interest factors, Respondents argue that her detention is in the public interest because it adheres to 8 U.S.C. § 1231. ECF No. 10 at 16. However, this ignores Ms. Munoz's arguments as discussed in her habeas petition that, regardless of what the statute authorizes at the outset of detention, her prolonged detention without a bond hearing violates her constitutional rights. ECF No. 1.

Respondents also assert an interest in preventing noncitizens with criminal histories from fleeing before their removal hearings. ECF No. 10 at 16. But given the significant liberty issue at stake here, Respondents should be required to show that Ms. Munoz's detention is the least restrictive way of ensuring her appearance at immigration hearings, and here Respondents have offered nothing to rebut Ms. Munoz's arguments that effective alternatives to detention are

available. ECF No. 1 at ¶ 80. Although Respondents mention Ms. Munoz's criminal history, Ms. Munoz is aware of no authority (and Respondents cite none) suggesting that she should forever be presumed dangerous and held without a bond hearing, particularly here where she has shown significant evidence of rehabilitation and presented a viable release plan to ensure her successful reintegration. *Id.* at ¶ 43.

Ms. Munoz has therefore demonstrated that all of the TRO factors weigh in her favor.

III. Due process requires release, or in the alternative, a bond hearing where the government bears the burden of justifying Ms. Munoz's ongoing detention.

As discussed above, Ms. Munoz's prolonged detention violates due process, and Respondents agree that the appropriate remedy is release. ECF No. 10 at 17. In the alternative and at a minimum, due process requires a bond hearing for Ms. Munoz where the government bears the burden of justifying ongoing detention by clear and convincing evidence.[5]

Respondents argue that, even if a bond hearing were ordered, "the relevant statutory and regulatory provisions" do not suggest that the government bear the burden of proof. ECF No. 10 at 18-20. However, Ms. Munoz is not arguing that the *statute* requires the government to bear the burden of proof. Rather, her argument is that "placing the burden of proof on the government comports with due process requirements." *Juarez*, 2024 WL 1012912, at *8; ECF No. 1 at ¶ 77.

Respondents cite *Basri v. Barr*, 469 F. Supp. 3d 1063, 1074 (D. Colo. 2020), a case that examines a different subsection of the immigration detention scheme, § 1226(a), where the Court declined to place the burden on the government in bond proceedings. ECF No. 8 at 14. *Basri*'s

[5] Respondents did not respond to several issues raised in Ms. Munoz's petition. The Court must find that Respondents "waived or abandoned" its opposition to those issues. *Steak N Shake Enterprises, Inc., v. Globex Company, LLC*, 110 F. Supp. 3d 1057, 1085 (D. Colo June 23, 2015). For example, Respondents do not contest that, at any such hearing, due process requires consideration of Ms. Munoz's ability to pay a bond and alternatives to detention. ECF No. 1 at ¶¶ 80-83. Similarly, Respondents also do not contest that, at any such hearing, the adjudicator may not place undue weight on unauthenticated evidence or antiquated criminal legal contacts. *Id.* at ¶ 79. As such, if this Court finds that a bond hearing is required, it should find that due process requires consideration of these factors.

analysis, which Respondents reiterate and adopt, rests on an erroneous reading of *Demore*[6] and *Jennings*,[7] which is inapposite to the analysis here. *Basri*, 469 F. Supp. 3d at 1073. Respondents also refer to *de Zarate*, a decision in which this Court placed the burden on the Petitioner. 2023 WL 2574370 at *5. However, since that case was decided, the Second Circuit has weighed in, joining the Third Circuit in placing the burden on the government to show by clear and convincing evidence that continued detention is warranted. *Black v. Decker*, 103 F.4th 133, 155 (2d Cir. 2024); *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213 (3d Cir. 2020). Further, Respondents disregard the weight of precedent on this issue, including numerous cases in this District. ECF No. 1 at ¶77.

Given the important liberty interest at stake in this case, and considering the precedents cited above and the majority trend – including by several judges of this district – of placing the burden on the government in cases like this one, Ms. Munoz respectfully urges the Court to order Respondents to show by clear and convincing evidence that she is dangerous or a flight risk.

CONCLUSION

None of Respondents' arguments provide sufficient reason for this Court to abandon the well-established balancing test applied in this district and in courts across the country. Because Ms. Munoz's prolonged, ongoing detention violates the Due Process Clause, this Court should grant her motion for TRO, order her immediate release or, in the alternative, order a bond hearing where the burden is on the government to justify her ongoing detention.

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[6] In relevant part, the Supreme Court in *Demore* rejected a noncitizen's argument that the mandatory detention provision at 8 U.S.C. § 1226(c) was facially unconstitutional, holding that Congress was justified in deciding that noncitizens with certain criminal legal contact could be jailed without access to bond for the brief period necessary to resolve removal proceedings. *Demore v. Kim*, 538 U.S. 510, 529–31 (2003); *see also* ECF No. 1 at ¶ 50.

[7] The Supreme Court in *Jennings* concluded, in relevant part, that as a matter of *statutory* interpretation the detention provisions at 8 U.S.C. § 1225(a), 1226(a) and 1226(c) do not require periodic bond hearings every six months. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

Dated: April 18, 2025

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CERTIFICATE OF SERVICE

I, Colleen Cowgill, hereby certify that on April 18, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice.

s/ Colleen Cowgill
Attorney for Petitioner