

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CRISTIAN ARGUETA ANDRADE,

Petitioner,

v.

DAWN CEJA, Warden of the Aurora
Contract Detention Facility owned and
operated by GEO Group, Inc.;

ROBERT GUADIAN, Field Office
Director, Denver Field Office, U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security;

TODD M. LYONS, Acting Director of
Immigration and Customs Enforcement
(ICE);

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

Respondents.

Case No.

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioner, Cristian Argueta Andrade (hereinafter “Petitioner” or “Mr. Argueta Andrade”) is a 25-year-old native of El Salvador who Immigration and Customs Enforcement (“ICE”) detained pursuant to 8 U.S.C. § 1226(c).
2. Mr. Argueta Andrade has several diagnosed mental health disabilities, the symptoms of which are exacerbated by his lengthy confinement. Dr. Bryan Rojas-Araúz, a licensed psychologist, has diagnosed him with primarily trauma-related disabilities: severe post-traumatic stress disorder (“PTSD”), major depressive disorder, and general anxiety disorder. As a result of these disabilities, Mr. Argueta Andrade experiences severe flashbacks, ongoing nightmares of persecution, hopelessness, and trouble with memory, among other debilitating symptoms. His uncontrolled mental health symptoms prevent him from benefitting from meaningful access to his immigration proceedings. Dr. Rojas-Araúz has recommended individualized therapy, namely Spanish mental health support, as an essential component to effective treatment and recovery of his trauma-related conditions. In addition, Dr. Rojas-Araúz has recommended group therapy. These services are unavailable to Mr. Argueta Andrade while in ICE custody.
3. ICE’s incarceration of Mr. Argueta Andrade began September 2, 2023—663 days ago—and has no end in sight.
4. For the vast majority of those days, Mr. Argueta Andrade has been incarcerated at the ICE facility administered by the GEO Group, a private prison company in Aurora, Colorado.
5. Mr. Argueta Andrade’s childhood was marked by past mental and physical torture at the hands of Salvadoran gangs and government authorities. His medical diagnoses corroborate the past harm he suffered.

6. Mr. Argueta Andrade fears similar future harm under El Salvador's "State of Emergency," where overwhelming evidence indicates Salvadoran officials will individually target him for arrest and torture in indefinite pretrial detention. Mr. Argueta Andrade is pursuing deferral of removal under the Convention Against Torture (CAT), which would permanently prevent his deportation. See 8 C.F.R. § 1208.18 (CAT). He is afraid that he will be tortured if he is deported and is diligently pursuing relief.
7. Mr. Argueta Andrade's current imprisonment of nearly 21 months is unreasonably prolonged and violates the Due Process Clause of the Fifth Amendment, which prohibits detention without sufficient process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003). A neutral arbiter has never conducted an individualized review of his custody status and without intervention from this Court, he will remain unconstitutionally detained for months or years to come.
8. Mr. Argueta Andrade is not able to request a bond hearing before an immigration judge ("IJ") because he is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). He thus has no avenue to seek redress for his prolonged detention other than the instant Petition.
9. Mr. Argueta Andrade respectfully requests that this Court hold a custody hearing or, in the alternative order a custody hearing before the IJ where the burden is on the government to establish, by clear and convincing evidence, that his continued detention is justified and that any risk posed by his release cannot be mitigated by alternatives to detention.
10. The federal habeas corpus statute provides that "[a] court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears

from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

11. Section 2243 further provides that the writ or order to show cause “shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.”
12. Section 2243 further provides that the court shall hold a hearing on the writ or order to show cause “not more than five days after the return unless for good cause additional time is allowed.”
13. Section 2243 further provides that the court “shall summarily hear and determine the facts and dispose of the matter as law and justice require.”
14. Petitioner respectfully requests that the Court immediately issue an Order to Show Cause against the Respondents.

JURISDICTION AND VENUE

15. Mr. Argueta Andrade is detained under 8 U.S.C. § 1226(c). He is in the custody of ICE ERO’s Denver Field Office, his appeal is pending before the Board of Immigration Appeals (“BIA”), after having been heard at Aurora Immigration Court. Venue is proper in the District of Colorado because it is most convenient; it is where “material events took place,” and where “records and witnesses pertinent to petitioner’s claim are likely to be found.” *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–94 (1973). Moreover, Colorado is the district of confinement. *Trump v. J.G.G.*, 604 U.S. ____ (2025).
16. Jurisdiction is proper under Art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).
17. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I § 9, cl. 2 (“The

privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require.”). The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (the All Writs Act); and 28 U.S.C. § 2241 (habeas corpus).

18. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act) to grant injunctive and declaratory relief.

PARTIES

19. Mr. Argueta Andrade is a 25-year-old native of El Salvador seeking deferral of removal under CAT. ICE detained him on September 2, 2023, at the Aurora facility, where he remains today. Respondents continue to confine Mr. Argueta Andrade pending the outcome of his second appeal in support of his application for CAT before the BIA. He has mental health disabilities, the symptoms of which have resulted in frequent flashbacks, nightmares, feelings of hopelessness, hyperawareness, and trouble with memory, among other symptoms while in ICE custody.
20. Respondent Dawn Ceja is, upon information and belief, the Warden of the Aurora facility, where Mr. Argueta Andrade is detained. Defendant Ceja is a legal custodian of Mr. Argueta Andrade. She is sued in her official capacity.
21. Respondent Robert Guadian is sued in his official capacity as Field Office Director of the Denver Field Office of ICE Enforcement and Removal Operations (“ERO”), which has administrative jurisdiction over Mr. Argueta Andrade’s detention. He is a legal custodian of Mr. Argueta Andrade with authority to authorize his release.
22. Respondent Kristi Noem is named in her official capacity as the Secretary of DHS. In this capacity she is responsible for the administration of the immigration laws pursuant to Section

402 of the Homeland Security Act of 2002. 107 Pub. L. 296 (November 25, 2003); *see also* 8 U.S.C. § 1103(a). She is a custodian of Mr. Argueta Andrade because ICE is a sub-agency of DHS.

23. Respondent Todd M. Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to detaining and removing certain noncitizens, Director Lyons is a legal custodian of Mr. Argueta Andrade.

24. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. She is responsible for the administration of the immigration laws as exercised by 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 Mr. Argueta Andrade’s removal and custody proceedings as well as the procedural standards used in those proceedings. She is a legal custodian of Mr. Argueta Andrade.

EXHAUSTION OF REMEDIES

25. Petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. Further, there is no exhaustion requirement because no administrative agency exists to adjudicate a petitioner’s constitutional challenges. *See Matter of C--*, 20 I. & N. Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board [of Immigration Appeals] lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”).

26. 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)).

27. Even if exhaustion were required, Mr. Argueta Andrade exhausted all possible remedies available to him. He is detained squarely under 8 U.S.C. § 1226(c) and thus requesting a custody redetermination hearing¹ before an IJ would be futile as the IJ would not have jurisdiction. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (emphasizing mandatory nature of detention under 8 U.S.C. § 1226(c)). Mr. Argueta Andrade submitted written requests for his release based both on ICE's discretionary authority as well as pursuant to federal disability law. *See* Exh. A (Parole request and Denial). ICE denied his request. *Id.* There are no further remedies to exhaust.

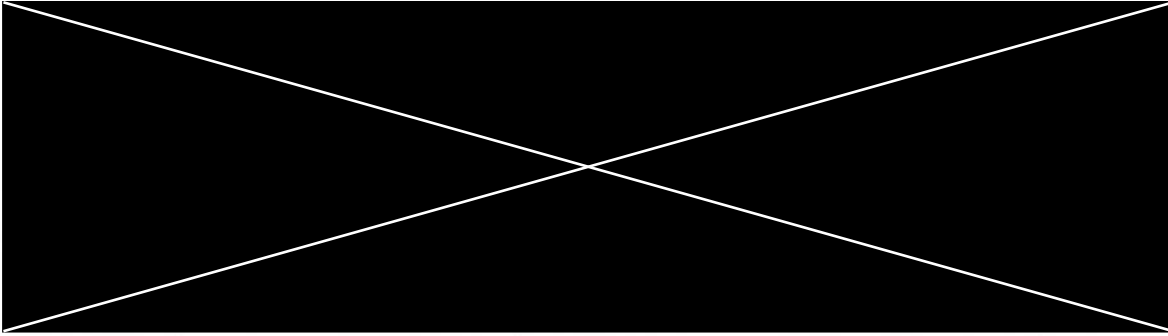
STATEMENT OF FACTS AND RELEVANT PROCEDURAL HISTORY

Mr. Argueta Andrade Survived a Childhood of Horrific Trauma in El Salvador

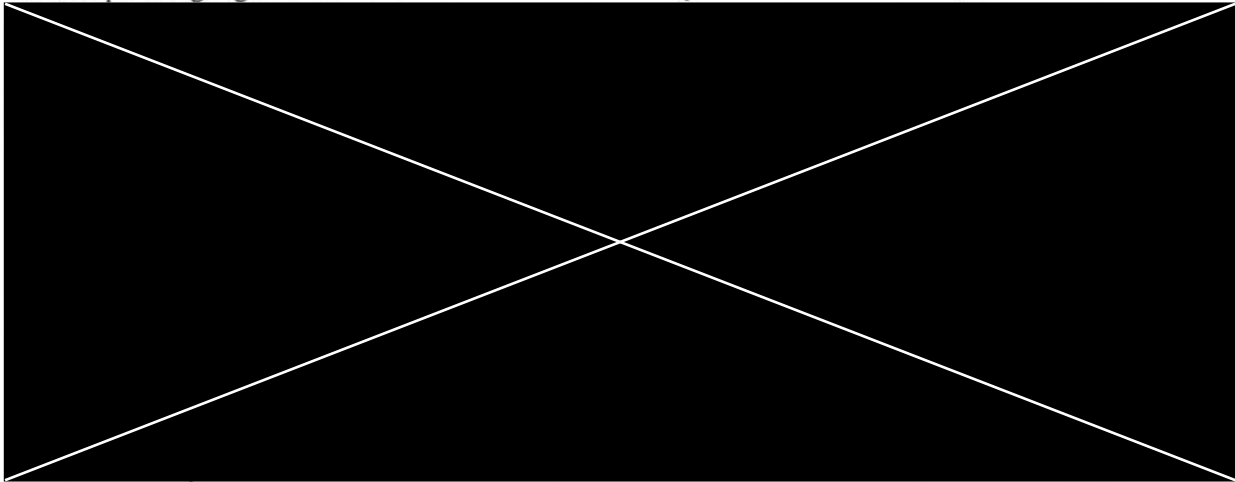
28. Ms. Argueta Andrade is a 25-year-old native and citizen of El Salvador. Throughout his time there, he experienced targeted violence and abuse at the hand of Salvadoran gangs, police, and military after his family abandoned him by age 13.

29. As a child, Mr. Argueta Andrade's father, mother, and sister had fled to the United States to

¹ 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.



30. Mr. Argueta Andrade also experienced severe physical and mental harm at the hands of police and military officials throughout his childhood, even after he sought out help from the police to escape the gang's forceful recruitment. Some examples of the harm he experienced at the



Mr. Argueta Andrade Seeks Safety in the United States and Has Criminal Legal Contacts

31. After reconnecting with his father through Facebook, Mr. Argueta Andrade fled from the continual violence he suffered at the hands of Salvador gangs and police to reunite with his father in New York. He entered the United States at 16 years old as an unaccompanied minor on May 8, 2016. By October 25, 2018, USCIS approved Mr. Argueta Andrade for Special Immigrant Juvenile Status (SIJS), a classification of noncitizen juveniles determined to have been abused, abandoned, or neglected by a parent. Noncitizens granted SIJS may qualify for lawful permanent residency (LPR), however SIJS grantees must wait in a backlog before be

granted LPR status.

32. After Mr. Argueta Andrade moved to Colorado and while waiting to adjust his status in the SIJS backlog, he was convicted of several offenses and incarcerated for three years in Colorado. Mr. Argueta Andrade plead guilty twice to C.R.S. § 18-18-403.5(1),(2)(c) for possession of a controlled substance. He also pled guilty to C.R.S. § 18-5-903(1),(2)(c) for possession of a financial device and C.R.S. § 42-4-1601(1) for failure to report an accident. Finally, Mr. Argueta Andrade pled guilty to § C.R.S. 18-18-111(a)(IV) for false identification and C.R.S. § 18-5-905 for possession of identity theft tools. Since pleading guilty to these convictions, Mr. Argueta Andrade has developed stronger social network and coping mechanisms as well as completed several drug and alcohol rehabilitation and self-improvement courses.

33. Mr. Argueta Andrade's history of complex trauma and mental health disabilities exacerbate the toll of detention and the risk he faces should she be deported to El Salvador. His diagnoses include severe PTSD, Major Depressive Disorder, and GAD. Mr. Argueta Andrade experiences flashbacks, feelings of hopelessness, sleeplessness, hyperawareness, and trouble with memory as a result of his mental health disabilities. *See* Exh. B (psychological evaluation).

34. Mr. Argueta Andrade's scores on the assessments diagnosing him with several mental health disability were notably high, reflecting profound mental distress. For example, he scored 36 points higher than the baseline score for PTSD, indicating a severe level of PTSD.

35. Dr. Rojas-Araúz reported many symptoms which impact Mr. Argueta Andrade's daily functioning such as sleeping and often feeling anxious, noting that he wakes up multiple times per night.

Mr. Argueta Andrade Has Faced Prolonged ICE Detention Upon Seeking Protection Under CAT

36. ICE detained Mr. Argueta Andrade on September 2, 2023 at the Aurora Contract Facility in Aurora, CO and he has remained in ICE custody since that time.

37. On October 27, 2023, Mr. Argueta Andrade submitted an I-485 application for Adjustment of Status and an I-589 application for Asylum, withholding of Removal, and CAT based on his fear of returning to El Salvador under the current State of Emergency. The I-589 expressed fear of being tortured and killed by the police or gangs in a Salvadoran prison due to his tattoos and past gang affiliation. On January 22, 2024, IJ James Polivka presided over Mr. Argueta Andrade's merits hearing at the Aurora Immigration Court, where Mr. Argueta Andrade informed the court that he would only seek deferral of removal under the CAT and abandon his application to adjust his status. The IJ denied Mr. Argueta Andrade protection under CAT on the same day and issued a written decision on Feb. 6, 2024..

38. Mr. Argueta Andrade successfully appealed his case to the BIA, which issued a decision on August 7, 2024, requiring the IJ to hear the case on remand. IJ Matthew Kaufman presided over his case on remand at the Aurora Immigration Court on December 20, 2024. On January 31, 2025, the IJ denied Mr. Argueta Andrade's claim for relief under CAT. Mr. Argueta Andrade timely appealed back to the BIA again, filing his brief on appeal on April 21, 2025.

39. Since being in ICE custody, Mr. Argueta Andrade's mental health has worsened. Mr. Argueta Andrade continues to experience high levels of anxiety, which inhibit his ability to adequately sleep and focus on his immigration proceedings.

40. Extended detention has exacerbated Mr. Argueta Andrade's mental health symptoms. After conducting a psychological evaluation, Dr. Rojas-Araúz, a licensed psychologist, has recommended individualized therapy to treat Mr. Argueta Andrade's mental health disabilities.

More specifically, he has identified Spanish mental health support as central to treatment and recovery from trauma. In addition, Dr. Rojas-Araúz has recommended Mr. Argueta Andrade engage in group therapy as well as substance abuse counseling. Mr. Argueta Andrade does not have access to any of these resources while in ICE custody.

41. On September 30, 2024 Mr. Argueta Andrade, through counsel, filed a formal release request with ICE based on him not presenting a flight risk or danger to the community, in addition to his worsening mental health symptoms. ICE policy guidance gives officers broad enforcement discretion to release individuals on parole, directing officers to prioritize using its limited resources towards individuals who pose a threat to national security, public safety, and border security.² ICE denied that request on October 3, 2024.

LEGAL FRAMEWORK

A. Ms. Argueta Andrade's Prolonged Detention Violates Procedural Due Process.

42. The Due Process Clause of the Fifth Amendment provides that “[n]o person... shall be deprived of life, liberty, or property without due process of law....” It protects individuals against two types of government action. Procedural due process ensures that government cannot unfairly and without meaningful process deprive a person of life, liberty, or property. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893 (1976).

43. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore*, 538 U.S. at 515-16; *Zadvydas*, 533 U.S. at 690. Detention is either discretionary, 8 U.S.C. § 1226(a), or mandatory, §§ 1225(b), 1226(c), 1231(a).

² See DHS Memorandum to Acting ICE Director Tae D. Johnson, Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

44. Under the discretionary detention statute, noncitizens may request a bond hearing at any time to contest whether they are a danger or a flight risk and thus properly detained during the pendency of their removal proceedings. 8 U.S.C. § 1226(a). Conversely, § 1226(c) requires the government to detain noncitizens in removal proceedings convicted of certain crimes, including CIMTs.

45. In *Jennings*, the Supreme Court rejected the use of the canon of constitutional avoidance from which the courts below had read an implicit six-month limit on detention without an individualized bond hearing into the statute. *Jennings*, 138 S. Ct. at 842. The Court remanded the case to the Court of Appeals for the Ninth Circuit to consider, among other issues, the constitutional arguments on their merits. *Id.* at 851. Deciding the case only on statutory grounds, the Supreme Court notably left open the question of what protections are constitutionally required people detained under §§ 1226(a) and 1226(c).

46. Following *Jennings*, courts in this District – and many others around the country³ - have applied a six-factor test when analyzing whether a noncitizen’s mandatory detention has become unconstitutionally prolonged and thus violate an individual’s right to procedural due process. *Singh v. Choate*, No. 19-CV-00909, 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019) (the *Singh* 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;

³ See, e.g., *Black*, 103 F.4th at 155; *German Santos*, 965 F.3d at 213; *Moore v. Nielsen*, 2019 WL 2152582 (N.D. Ala. May 3, 2019); *Arido-Sorro v. Garland*, 2024 WL 4393264 (D. Ariz. Sept. 5, 2024); *Doe v. Becerra*, 704 F.Supp.3d 1006 (N.D. Cal. 2023); *Singh v. Garland*, 2023 WL 5836048 (E.D. Cal. Sept. 8, 2023); *Durand v. Allen*, 2024 WL 711607 (S.D. Cal. Feb. 21, 2024); *Lewis v. Garland*, 2023 WL 8898601 (C.D. Cal. July 31, 2023); *Hyppolite v. Enzer*, 2007 WL 1794096 (D. Conn. June 19, 2007); *Lacroix v. Lynch*, 2016 WL 1165804 (N.D. Fla. Jan. 7, 2016).

and (6) the likelihood that the removal proceedings will result in a final order of removal). This six-factor test has been routinely applied to habeas petitioners seeking a bond hearing under § 1226(c). *See, e.g., Daley v. Choate*, No. 22-CV-03043-RM, 2023 WL 2336052, at *3 (D. Colo. Jan. 6, 2023) (detention of 14 months prolonged); *Viruel Arias*, 2022 WL 4467245, at *2 (14 months); *Sheikh v. Choate*, No. 22-cv-1627-RMR, 2022 WL 17075894, at *3 (D. Colo. Sep. 26, 2022) (13 months); *Villaescusa-Rios v. Choate*, No. 20-cv-03187-CMA, 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021) (collecting cases); *Martinez Viguerias v. Ceja*, No. 24-cv-03056-PAB (D. Colo. Dec. 19, 2024) (applying six-factor test and finding a due process violation after 21 months of detention despite Eighth Circuit’s departure from that test in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024)); *but see Utoliti v. Ceja*, No. 1:25-cv-00418-GPG-CYC (D. Colo. May 29, 2025) (deferring to out-of-circuit precedent instead of the overwhelming trend in this District by declining to apply the six-factor test to a noncitizen who had previously had a bond hearing).

47. “[T]he overwhelming majority of courts” have “held that the government must bear the burden by clear and convincing evidence” when there is a due process violation stemming from prolonged detention. *Pedro O. v. Garland*, 543 F. Supp. 3d 733, 742 (D. Minn. 2021) (citing *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020)) (explaining that the government bears the burden of proof by clear and convincing evidence because the noncitizen’s “potential loss of liberty is so severe” in the § 1226 context). Courts in this District agree. *Juarez*, 2024 WL 1012912, at *8; *Daley*, 2023 WL 2336052, at *5; *Viruel Arias*, 2022 WL 4467245, at *3; *Sheikh*, 2022 WL 17075894, at *4; *Villaescusa-Rios*, 2021 WL 269766, at *5; *Singh*, 2019 WL 3943960, at *7; *but see de Zarate*, 2023 WL 2574370, at *5 (finding a due process violation and ordering a bond hearing but declining to place the

burden of proof on the government); *Martinez Viguerias v. Ceja*, No. 24-cv-03056-PAB (D. Colo. Dec. 19, 2024) (same).

48. Here, each of these factors favor Mr. Argueta Andrade.

49. 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. Mr. Argueta Andrade has been detained in civil immigration detention since September 3, 2023, more than 21 months as of the date of this Petition. And there is no end in sight.

50. Mr. Argueta Andrade’s detention is nearly four times as long as the six-month period recognized in *Zadvydas*. This factor strongly weighs in his favor. *Daley v. Choate*, No. 22-CV-03043-RM, 2023 WL 2336052, at *3 (D. Colo. Jan. 6, 2023) (detention of 14 months prolonged); *Viruel Arias*, 2022 WL 4467245, at *2 (14 months); *Sheikh v. Choate*, No. 22-cv-1627-RMR, 2022 WL 17075894, at *3 (D. Colo. Sep. 26, 2022) (13 months); *Villaescusa-Rios v. Choate*, No. 20-cv-03187-CMA, 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021); *Martinez Viguerias v. Ceja*, No. 24-cv-03056-PAB (D. Colo. Dec. 19, 2024) (21 months); *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”).

51. The second factor, the duration of future detention, also weighs in favor of Mr. Argueta Andrade. “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 Smith v. Barr*, 444 F. Supp. 3d 1289, 1302 (N.D. Okla. 2020) (“[T]he fact that [petitioner’s] 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.”).

52. Mr. Argueta Andrade’s civil detention is a direct result of the government continuing to detain him, while he continues to seek relief under the CAT. Mr. Argueta Andrade has already prevailed once on appeal before the BIA, which lasted approximately seven months, and has recently filed a second appeal alleging significant legal errors on the part of the IJ. Moreover, should it be necessary, Mr. Argueta Andrade intends to seek further appellate review before the Tenth Circuit with a Petition for Review. *See* 8 U.S.C. § 1252(b). Mr. Argueta Andrade’s detention is already prolonged and will continue indefinitely absent this Court’s intervention. Accordingly, this factor weighs strongly in his favor. *Daley*, 2023 WL 2336052, at *3; *Sheikh*, 2022 WL 17075894, at *3.

53. The third factor, the conditions of detention, also weighs heavily in favor of Mr. Argueta Andrade. At the Aurora Immigration Detention Facility, Mr. Argueta Andrade does not have access to individual therapy in the form of Spanish mental health support. Dr. Rojas-Araúz has identified Spanish mental health services as central to treating Mr. Argueta Andrade’s mental health disabilities resulting from the profound trauma he has experienced. While the Aurora facility offers minimal mental health support, it does not provide access to a bilingual licensed counselor. Dr. Rojas-Araúz has specifically identified the importance of receiving mental health support from a native Spanish speaker to develop trust and open communication between the provider and Mr. Argueta Andrade to effectively treat his severe mental health disabilities.

54. Conditions at the Aurora facility are *not* meaningfully different from criminal detention. Aurora is operated by the GEO Group, a private prison company that also operates many

facilities that incarcerate people serving criminal sentences. *See Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (finding that this factor favored petitioner detained in private, for profit carceral facility “operated by CoreCivic, Inc., which also runs many state penitentiaries”).⁴ Complaints detail oppressive and unsafe conditions, including substandard medical and mental health care, racial discrimination, medical neglect, failure to comply with agency standards, reports of excessive use of force, disability discrimination, retaliation against First Amendment protected speech, and claims related to wage violations and forced labor.⁵

⁴ See also GEO Group, “Our Locations,” <https://www.geogroup.com/LOCATIONS>, accessed May 14, 2024 (listing both ICE facilities and prisons operated by GEO Group under the same category of facility, “secure services”); Timothy Williams and Richard A. Oppel Jr., *Escapes, Riots and Beatings. But States Can’t Seem to Ditch Private Prisons*, The New York Times (April 10, 2018) (explaining that GEO Group and CoreCivic are the two largest private prison corporations in the United States and that both run penal facilities).

⁵ See e.g., American Immigration Council, National Immigration Project, RMIAN, “Complaint Underscoring Why People Who are Transgender and Nonbinary Should Not Be Detained in Civil Immigration Detention,” (Apr. 9, 2024), https://ninpnl.org/sites/default/files/2024-04/CRCL_complaint-transgender-care.pdf; American Immigration Council, National Immigration Project, RMIAN, “Complaint Detailing Abusive Overuse of Solitary Confinement and Mistreatment that Disproportionately Impacts Persons with Disabilities at the Aurora Contract Detention Facility,” (Jul. 13, 2023), https://www.americanimmigrationcouncil.org/sites/default/files/research/misuse_of_solitary_confinement_in_colorado_immigration_detention_center_complaint.pdf; American Immigration Council, 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), 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 [people in detention] to clean up all common areas and after other [detained people] 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

Three people detained at Aurora have died since 2012, most recently Melvin Ariel Calero-Mendoza in 2022.⁶ When someone is detained in the Aurora facility, this factor weighs in their favor. *de Zarate*, 2023 WL 2574370, at *4.

55. The fourth and fifth factors consider which party is responsible for any delay in the petitioner's removal proceedings. Here, the facts and procedural history of Mr. Argueta Andrade's case indicate that the significant delay in his removal proceedings is attributable to procedural and due process errors by the government – more specifically by the errors and actions of IJs in the Aurora Immigration Court.

56. Delays caused by individuals' 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. 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. Short continuances and minor extensions to briefing deadlines have been found to demonstrate “good-faith efforts to obtain counsel and to allow counsel adequate time to prepare [petitioner's] merits briefing before the IJ,” and not dilatory

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 [] care; and facility staff and ICE's deliberate indifference to a detainee's serious medical needs.”).

⁶ 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 members, say the report shows that Calero-Mendoza's death was potentially preventable and follows a pattern of deaths at ICE facilities.”).

tactics. *Juarez*, 2024 WL 1012912, at *7.

57. Respondents are responsible for delays regardless of whether they were caused by a lack of diligence. *See id.* (finding in favor of petitioner where respondents acknowledged that the government caused “various delays”). Respondents need not act in bad faith for any delays they caused to weigh in Mr. Argueta Andrade’s favor. *Lopez Santos v. Clescери*, No. 20-CV-50349, 2021 WL 663180, at *6 (N.D. Ill. 19, 2021), *appeal dismissed sub nom. Santos v. Clescери*, No. 21-1697, 2021 WL 8154943 (7th Cir. June 30, 2021) (finding that while the government did not act in bad faith, the “delay factor considers which party caused the delay” and the party that caused the delay was the government); *Martinez v. Clark*, No. 18-CV1669, 2019 WL 5968089, at *10 (W.D. Wash. May 23, 2019), *report and recommendation adopted*, No. 18-CV-01669, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (“Although not the result of intentional action on behalf of government officials, this delay is attributable to the Government.”); *Chairez-Castrejon v. Bible*, 188 F. Supp. 3d 1221, 1229 (D. Utah 2016).
58. “Continued detention will also appear more unreasonable when the delay in proceedings was caused by the immigration court or other non-ICE government officials.” *Sajous v. Decker*, No. 18-CV-2447, 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018) (citing *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring)). When delay is due to long continuances caused by immigration court docket crowding, this factor runs against the government. *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 931 (W.D. Wash. 2020) (holding that “crowded dockets” constitute delay attributable to the government). “[T]he operative question should be whether the [noncitizen] has been the cause of the delayed immigration proceeding and, where the fault is attributable to some entity other than the [noncitizen], the factor will weigh in favor of concluding that continued detention without a bond hearing is unreasonable.” *Sajous*, 2018

WL 2357266, at *11.

59. Mr. Argueta Andrade pursued his rights diligently and did not delay proceedings. Since Mr. Argueta Andrade's pro bono counsel from the Student Law Office at the University of Denver entered its appearance on December 7, 2023, counsel only requested one continuance for his Merits hearing on remand because the Aurora Immigration Court had moved the hearing date *sua sponte*, creating a scheduling conflict that prohibited the Petitioner's country conditions expert from being able to testify. Although it was the Petitioner who filed an appeal after Mr. Argueta Andrade's original merits hearing to the BIA, this cannot be held against him because it was a good-faith challenge to removal.

60. Respondents caused most delays in Mr. Argueta Andrade's removal proceedings and this factor works against them.

61. Respondents first delayed Mr. Argueta Andrade's removal proceedings by inadequately adjudicating his claim under CAT. The BIA consequently ordered the Aurora Immigration Court to hear Mr. Argueta Andrade's case again on remand, emphasizing that the IJ did not conduct sufficient fact-finding in addition to making findings inconsistent with intervening Board precedent. As a result of the IJ's errors, Mr. Argueta Andrade's proceedings have lasted an additional nine months between the filing of his appeal and his merits hearing on remand.

62. Respondents also delayed Mr. Argueta Andrade's removal proceedings by the immigration court moving his remand hearing date *sua sponte*, after Mr. Argueta Andrade's counsel had communicated to the court the country conditions expert's availability. The IJ originally set Mr. Argueta Andrade's remand hearing for October 21, 2024 to accommodate the expert witness's schedule. However, on September 4, 2024, the court moved the hearing date to October 22, 2024 *sua sponte*. Counsel, after confirming the expert would not be able to testify

that day, filed a motion with the immigration court, requesting the hearing be rescheduled to accommodate the expert's schedule and ensure Mr. Argueta Andrade had a full and fair remand hearing. The court consequently moved the hearing date to December 20, 2024, delaying proceedings an additional two months, which could have been avoided had the immigration court communicated with Petitioner's counsel prior to moving the hearing date.

63. Mr. Argueta Andrade prevails on this factor.

64. The sixth and final factor, the likelihood that the removal proceedings will result in a final order of removal, also favors Mr. Argueta Andrade. Mr. Argueta Andrade has a strong claim for protection under the Convention Against Torture. He has twice presented overwhelming evidence to that effect. As is clear from the facts and procedural history of the removal proceedings, it is unlikely that the conclusion of removal proceedings will result in Mr. Argueta Andrade being deported. Given the errors complained of, Mr. Argueta Andrade is likely to prevail on appeal. Should he prevail, he will either be granted protection outright or have a third hearing before an IJ with instructions by the BIA narrowing the issues. He is unlikely to be deported.

65. In sum, each of the as-applied factors weigh in favor of finding Mr. Argueta Andrade's prolonged detention without a bond hearing unconstitutional.

B. The Appropriate Remedy for this Due Process Violation is Immediate Release, or in the Alternative, the Court Should Order a Custody Hearing Where the Government Bears the Burden of Justifying Mr. Argueta Andrade's Continued Detention.

66. Mr. Argueta Andrade's prolonged detention violates procedural due process, and the appropriate remedy is release. 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).

67. In the alternative and at a minimum, due process requires a custody hearing for Mr. Argueta Andrade. *See Daley*, 2023 WL 2336052, at *5; *Viruel Arias*, 2022 WL 4467245, at *3; *Sheikh*, 2022 WL 17075894, at *4.

68. At that custody hearing, the government must justify Mr. Argueta Andrade's ongoing detention by clear and convincing evidence because "placing the burden of proof on the government comports with due process requirements." *Juarez*, 2024 WL 1012912, at *8 (citation omitted). When the government seeks to deprive someone of liberty, it bears the burden of proving that such deprivation is justified. Because "civil commitment for any purpose constitutes a significant deprivation of liberty," *Addington v. Texas*, 441 U.S. 418, 425 (1979), Mr. Argueta Andrade's ongoing detention constitutes a serious deprivation. *See Foucha v. Louisiana*, 504 U.S. 71, 75–76 (1992).

69. "[T]he overwhelming majority of courts" have "held that the government must bear the burden by clear and convincing evidence" when there is a due process violation stemming from prolonged detention. *Pedro O. v. Garland*, 543 F. Supp. 3d 733, 742 (D. Minn. June 14, 2021) (citing *German Santos*, 965 F.3d at 213–14) (explaining that the government bears the burden of proof by clear and convincing evidence because the noncitizen's "potential loss of liberty is so severe" in the § 1226 context).⁷ Courts in this District agree. *Juarez*, 2024 WL 1012912, at

⁷ 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., Black v. Decker*, 103 F.4th 133, 147 (2d Cir. 2024)(applying *Mathews* factors to an as-applied challenge to 8 U.S.C. § 1226 (c)); *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020) (challenge to § 1226(a)); *Pedro O.*, 543 F. Supp. 3d at 741. Here, Mr. Argueta Andrade'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

*8; *Daley*, 2023 WL 2336052, at *5; *Viruel Arias*, 2022 WL 4467245, at *3; *Sheikh*, 2022 WL 17075894, at *4; *Villaescusa-Rios*, 2021 WL 269766, at *5; *Singh*, 2019 WL 3943960, at *7; *but see de Zarate*, 2023 WL 2574370, at *5 (finding a due process violation and ordering a bond hearing but declining to place the burden of proof on the government); *Martinez Viguierias v. Ceja*, No. 24-cv-03056-PAB (D. Colo. Dec. 19, 2024) (same).

70. 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's 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 IJ 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 cannot meet its burden by relying on antiquated criminal legal contacts that lack

factor overwhelmingly weighs in Mr. Argueta Andrade's favor given that his liberty interest is at stake. *See Zadvydas*, 533 U.S. at 690. Second, should the Court rightfully find Mr. Argueta Andrade'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 Mr. Argueta Andrade's detention should fall on Respondents.

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”); *Quituizaca v. Barr*, No. 20-CV-403, 2021 WL 6797494, at *5 (W.D.N.Y. Jan. 5, 2021) (same). Similarly, unadjudicated criminal conduct from outside the United States cannot be sufficient for the government to meet its burden.

71. 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).

72. While the government may assert an interest in Mr. Argueta Andrade’s continued detention pending his removal proceedings, this Court need not weigh such considerations in determining the issue presented here—whether Mr. Argueta Andrade’s prolonged, continued detention without a custody hearing violates due process. Rather, if the government has evidence regarding Mr. Argueta Andrade’s risk of flight or danger to the community, it will be free to present it in a constitutionally proper hearing and the IJ, rather than this Court, will weigh such evidence accordingly in determining whether the government has met its burden. *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”) (citations omitted); *Portillo v. Hott*, 322 F. Supp. 3d 698,

709 (E.D. Va. 2018) (finding that “the government's interest in guarding against [petitioner's] flight can be substantially protected even if [petitioner] is given an individualized bond hearing and released on bond because a critical factor that the IJ will be forced to consider is whether [petitioner] is a flight risk and whether there are conditions of release that could reasonably secure his future appearance”).

73. Finally, due process 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. *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”); *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978).
74. Here, Mr. Argueta Andrade’s merits an individualized bond hearing before a neutral adjudicator where the burden of proof lies on the government and the standard of proof is clear and convincing to continue detention. The government cannot meet its burden with antiquated or unauthenticated evidence and the IJ must consider Mr. Argueta Andrade’s ability to pay and consider alternatives to detention.

CLAIM FOR RELIEF

COUNT I

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

99. All of the foregoing allegations are repeated and realleged as though fully set forth herein.
100. The Fifth Amendment's Due Process Clause forbids the government from depriving any person of liberty "without due process of law."
101. To justify Mr. Argueta Andrade's prolonged detention, the Due Process Clause of the Fifth Amendment requires that the government establish, at an individualized hearing before a neutral decision maker, that Mr. Argueta Andrade's detention is justified by clear and convincing evidence of flight risk or danger.
102. Due process requires that Mr. Argueta Andrade be released from detention, subject to appropriate conditions of release, or in the alternative, that he receive a bond hearing at which the government bears the burden to justify further detention by clear and convincing evidence.
103. The government's refusal to provide an individualized bond hearing thus violates the Due Process Clause of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE Mr. Argueta Andrade respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Enjoin Respondents from transferring Mr. Argueta Andrade outside of the jurisdiction of the District of Colorado pending the resolution of this case;
- c. Issue an Order to Show Cause against Respondents;
- d. Issue an order that Mr. Argueta Andrade's continued detention in ICE civil immigration detention violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution;
- e. Issue an order that orders Respondents to immediately release Mr. Argueta Andrade from ICE civil immigration detention on his own recognizance, or, in the alternative, provide him, within seven days of this Court's order, a constitutionally adequate, individualized

bond hearing before an impartial adjudicator at the Aurora Immigration Court 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 Mr. Argueta Andrade's ability to pay a bond;
 - (3) the adjudicator may not give undue weight to foreign unadjudicated alleged criminal conduct;
 - (4) the adjudicator must take into consideration Mr. Argueta Andrade's mental health diagnoses and trauma when considering criminal legal contacts;
- f. 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;
 - g. Award Mr. Argueta Andrade his 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
 - h. Grant any further relief as this Court deems just and proper.

Dated: June 26, 2025

s/ Elizabeth Jordan
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VERIFICATION

I, s/ Elizabeth Jordan, 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: June 26, 2025