

No. 25-1263

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ALFREDO (DAYANA) MUNOZ RAMIREZ,
Petitioner-Appellee,
v.

**PAMELA BONDI, ROBERT HAGAN, KRISTI NOEM, TODD LYONS, AND
JUAN BALTAZAR, in their official capacities,**
Respondents-Appellants.

OPENING BRIEF

On Appeal from the United States District Court
for the District of Colorado
The Honorable Regina M. Rodriguez
D.C. No. 25-cv-01002-RMR

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ORAL ARGUMENT REQUESTED
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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF RELATED CASES vi

JURISDICTIONAL STATEMENT vii

STATEMENT OF THE ISSUES 1

STATEMENT OF THE CASE 2

1. Munoz Ramirez comes to the United States from El Salvador in 1993, accumulates a lengthy criminal history, and is removed in 2018..... 2

2. Munoz Ramirez returns to the United States in 2019, is convicted of further crimes, and is encountered by ICE in California state prison. 2

3. ICE reinstates the prior removal order and detains Munoz Ramirez pending removal..... 3

4. Munoz Ramirez seeks withholding of removal, loses, appeals to the BIA, loses, and petitions for review in this Court, which stays removal pending its decision. 4

5. In the meantime, Munoz Ramirez files a habeas petition alleging unconstitutionally prolonged post-final-removal-order detention..... 6

6. The district court determines that Munoz Ramirez’s detention does not violate *Zadvydas*, but concludes that it does violate due process, applying a six-factor analysis. 7

7. The district court orders a bond hearing at which the government must bear the burden to justify continuing detention by clear and convincing evidence..... 9

SUMMARY OF ARGUMENT 10

ARGUMENT 12

I. *Zadvydas* provides the sole standard for evaluating post-final-removal-order detention, and the district court thus erred in applying a different six factor approach..... 12

A. In *Zadvydas*, the Supreme Court construed the scope of § 1231 specifically to avoid any possible due process concerns about prolonged detention, so where *Zadvydas* is satisfied, no due process violation based on prolonged detention can be found. ... 13

B. The district court erred in evaluating Munoz Ramirez’s claim under the six factors instead of *Zadvydas*. 19

C. To the extent *Arteaga-Martinez* left room for as-applied due process challenges in “exceptional cases,” this is no such case..... 27

II. The Due Process Clause does not require that the government bear the burden to justify continued detention at immigration bond hearings. 31

CONCLUSION 40

STATEMENT CONCERNING ORAL ARGUMENT 40

CERTIFICATE OF COMPLIANCE 41

CERTIFICATE OF SERVICE 42

ATTACHMENT: Order on Habeas Petition (Doc. 14, 05/05/2025)

TABLE OF AUTHORITIES

Federal Cases

<i>Banyee v. Garland</i> , 115 F.4th 928 (8th Cir. 2024)	16, 17
<i>Black v. Almodovar</i> , 156 F.4th 171 (2d Cir. 2025)	32
<i>Castaneda v. Perry</i> , 95 F.4th 750 (4th Cir. 2024)	17, 26, 28, 29, 30
<i>Demore v. Kim</i> , 538 U.S. 510 (2003)	15, 33, 37, 38
<i>Diouf v. Napolitano</i> , 634 F.3d 1081 (9th Cir. 2011)	18
<i>G.P. v. Garland</i> , 103 F.4th 898 (1st Cir. 2024)	26
<i>Guerrero-Sanchez v. Warden</i> , 905 F.3d 208 (3d Cir. 2018)	18, 22, 32
<i>Hutto v. Davis</i> , 454 U.S. 370 (1982)	21
<i>Johnson v. Arteaga-Martinez</i> , 596 U.S. 573 (2022)	17, 22, 28, 30
<i>Johnson v. Guzman Chavez</i> , 594 U.S. 523 (2021)	22, 23, 38
<i>Juarez v. Choate</i> , No. 24-cv-00419-CNS, 2024 WL 1012912 (D. Colo. Mar. 8, 2024)	7, 21, 22, 27, 32
<i>Kabba v. Mukasey</i> , 530 F.3d 1239 (10th Cir. 2008)	12

Landon v. Plasencia,
459 U.S. 21 (1982) 34, 38

Martinez v. Larose,
968 F.3d 555 (6th Cir. 2020) 16, 17

Mathews v. Eldridge,
424 U.S. 319 (1976) 11, 34, 36

Miranda v. Garland,
34 F.4th 338 (4th Cir. 2022) 11, 33, 35, 36, 38

Morrissey v. Brewer,
408 U.S. 471 (1972) 35

Rael v. Williams,
223 F.3d 1153 (10th Cir. 2000) 26

Reno v. Flores,
507 U.S. 292 (1993) 37-38

Rodriguez Diaz v. Garland,
53 F.4th 1189 (9th Cir. 2022) 18

Singh v. Choate,
No. 19-cv-00909-KLM, 2019 WL 3943960
(D. Colo. Aug. 21, 2019)..... 7, 8, 24

Soberanes v. Comfort,
388 F.3d 1305 (10th Cir. 2004) 26

State Oil Co. v. Khan,
522 U.S. 3 (1997) 20-21

United States v. Smith,
133 F.3d 737 (10th Cir. 1997) 32

Zadvydas v. Davis,
533 U.S. 678 (2001) 1, 7, 14, 15, 25, 34, 38, 39

Federal Statutes, Rules & Regulations

8 U.S.C. § 1182	13
8 U.S.C. § 1225	13
8 U.S.C. § 1226	6, 9, 13, 15, 17, 19, 21, 22, 23, 33
8 U.S.C. § 1227	13
8 U.S.C. § 1231	7, 9, 10, 13, 16-22, 24, 25, 26, 27, 31
8 U.S.C. § 1231	1, 3, 4, 10, 12, 13, 14, 17, 18, 22, 23, 26, 28, 33-39
8 U.S.C. § 1231	4, 5
28 U.S.C. § 1291	vii
28 U.S.C. § 1331	vii
28 U.S.C. § 2241	vii
28 U.S.C. § 2253	vii
Fed. R. App. P. 4(a).....	vii
Fed. R. App. P. 43(c)(2).....	vii
8 C.F.R. § 241.4(d)	30, 37
8 C.F.R. § 241.4(l)(1).....	9
8 C.F.R. § 1208.16(c).....	4
8 C.F.R. § 1208.17.....	4

STATEMENT OF RELATED CASES

Munoz Ramirez has filed two petitions for review of decisions of the Board of Immigration Appeals in *Munoz Ramirez v. Bondi*, Nos. 24-9572 & 25-9534. Those petitions are set for argument on January 20, 2026.

JURISDICTIONAL STATEMENT

Munoz Ramirez filed an application for a writ of habeas corpus over which the district court had original jurisdiction under 28 U.S.C. §§ 2241 and 1331. App.5.¹ The district court granted the application on May 5, 2025, App.562, and appellants filed a notice of appeal on July 7. App.588; *see* Fed. R. App. P. 4(a)(1)(B)(iii). The district court entered final judgment on July 24, App.591, and the July 7 notice of appeal became effective as of that date. Fed. R. App. P. 4(a)(2). This court has jurisdiction under 28 U.S.C. §§ 1291 and 2253.

¹ Appellants' appendix will be cited as "App.[page number]."

In addition, per Fed. R. App. P. 43(c)(2), Robert Hagan is hereby substituted for Robert Guadian as Denver Field Office Director for ICE, and Juan Baltazar is substituted for Dawn Ceja as the Warden of the Aurora Contract Detention Facility.

STATEMENT OF THE ISSUES

Detained under a final order of removal by Immigration and Customs Enforcement (ICE) under 8 U.S.C. § 1231(a)(6), Munoz Ramirez brought a habeas petition alleging unconstitutionally prolonged detention. The district court determined that continued detention did not violate *Zadvydas v. Davis*, 533 U.S. 678 (2001)—the principal Supreme Court precedent addressing the lawfulness of prolonged detention for aliens with final orders of removal—because removal was reasonably foreseeable. Despite this holding, the court also held that Munoz Ramirez’s detention violated due process under a different, six-factor approach. The court ordered a bond hearing at which the government would bear the burden of justifying continued detention with clear and convincing evidence.

1. Did the district court err by applying the six factors instead of relying on *Zadvydas* as the sole standard to measure post-final-removal-order detention under § 1231?
2. Did the district court err by holding that the government should bear the burden to justify continued detention at the bond hearing?

STATEMENT OF THE CASE

1. Munoz Ramirez comes to the United States from El Salvador in 1993, accumulates a lengthy criminal history, and is removed in 2018.

Munoz Ramirez is a native and citizen of El Salvador who alleges first entering the United States in 1993 at the age of 15. App.10, 544. Between 1993 and 2018, Munoz Ramirez stood convicted of ten separate crimes in California state court including battery with serious bodily injury, possession of controlled substances, and felony vehicle theft. App.544-46. Munoz Ramirez's lengthiest sentence (for a 2007 vehicle theft conviction) was 32 months in prison. App.545.

The government initiated removal proceedings after Munoz Ramirez was taken into custody by ICE around 2016. App.10. The immigration judge denied Munoz Ramirez's claim for cancellation of removal, which the Board of Immigration Appeals (BIA) affirmed. App.544. Munoz Ramirez was then removed to El Salvador in 2018. *Id.*

2. Munoz Ramirez returns to the United States in 2019, is convicted of further crimes, and is encountered by ICE in California state prison.

Although legally male, Munoz Ramirez asserts transgender identity and claims to have begun living openly as a woman upon return to El Salvador. App.10-11. Munoz Ramirez alleges beatings and

 at the hands of both gang members and authorities in El Salvador based on that transgender identity. App.11.

Munoz Ramirez illegally reentered the United States in 2019. App.11-12. Another California state conviction followed in short order, and Munoz Ramirez was encountered by ICE in state custody. App.12, 544-46. Because ICE lacked sufficient housing at that time, Munoz Ramirez was placed on an order of supervision, but did not comply and absconded. App.544. Munoz Ramirez was then convicted in 2023 of battery on a peace officer and vehicle theft and was once again imprisoned in California. App.546.

3. ICE reinstates the prior removal order and detains Munoz Ramirez pending removal.

Upon release in November 2023, ICE again took custody of Munoz Ramirez and reinstated the 2018 order of removal under 8 U.S.C. § 1231(a)(5).² ICE detained Munoz Ramirez under § 1231(a)(6) at the

² “If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.” 8 U.S.C. § 1231(a)(5).

Aurora Contract Detention Facility, in a unit specifically designated to house individuals identifying as transgender. App.12.

4. Munoz Ramirez seeks withholding of removal, loses, appeals to the BIA, loses, and petitions for review in this Court, which stays removal pending its decision.

While unable to challenge or reopen the removal order reinstated under § 1231(a)(5), Munoz Ramirez could—and did—seek withholding of removal under § 1231(b)(3) and protection under the Convention Against Torture, pursuant to 8 C.F.R. §§ 1208.16(c), 1208.17, and 1208.18. App.458. (These are referred to as “withholding-only proceedings.”) Munoz claimed a reasonable fear of persecution and torture based on transgender status if returned to El Salvador. App.12-13.

The immigration judge denied withholding of removal. The judge found that Munoz Ramirez’s testimony lacked credibility based on “the omissions, implausibility, lack of candor, and significant inconsistencies [in the] testimony.” App.460-61. The judge was troubled by Munoz Ramirez’s unconvincing explanation of abdominal tattoos reading “M 13” and “Locos”—tattoos that, to the judge, suggested affiliation with MS-13 and the West Side Locos gangs. *Id.* The immigration judge

also concluded that Munoz Ramirez’s 2006 conviction for vehicle theft was a “particularly serious crime” that foreclosed withholding of removal under § 1231(b)(3)(B)(ii). *See* App.465-66. As to Munoz Ramirez’s CAT claim, the judge did not believe “that Respondent has ever identified as a transgender woman, or a member of the LGBTQ+ community, outside of these immigration proceedings nor that Respondent intends to do so in the future.” App.467.

Munoz Ramirez, now represented by counsel, App.473, appealed to the BIA, which affirmed. App.471-75. (One judge would have remanded to the immigration judge “for further evaluation of the applicant’s credibility as well as her applications for relief.” App.476.) Filing a petition for review, Munoz Ramirez obtained a stay of removal pending this Court’s decision. App.481 (*See Munoz Ramirez v. Bondi*, No. 24-9572). Munoz Ramirez also unsuccessfully asked the BIA to reopen the withholding-only proceedings for submission of new evidence and has sought review of that denial as well. *See* App.484-87 (*See Munoz Ramirez v. Bondi*, No. 25-9534). Both PFRs are set for consolidated oral argument on January 20, 2026.

5. In the meantime, Munoz Ramirez files a habeas petition alleging unconstitutionally prolonged post-final-removal-order detention.

While the withholding-only proceedings continued, Munoz Ramirez filed an application for a writ of habeas corpus, asserting a claim for unconstitutionally prolonged detention. App.5, 497. At the time of that filing, Munoz Ramirez had been detained by ICE for 505 days. App.510-14. ICE had conducted custody reviews in February, May, and August of 2024, at which it determined that Munoz Ramirez remained a flight risk and a danger to the community, and that removal was reasonably foreseeable given the reinstated order of removal. App.547-48.

In the petition, Munoz Ramirez did not argue that the allegedly prolonged detention violated *Zadvydas*. Instead, Munoz Ramirez urged the court to evaluate the detention under six factors used by some district courts (but never adopted by this Court) to test the legality of pre-removal-order detention under 8 U.S.C. § 1226. App.510-11 (citing,

inter alia, *Singh v. Choate*, No. 19-cv-00909-KLM, 2019 WL 3943960, at *4-7 (D. Colo. Aug. 21, 2019)).³

In response, the government argued that the sole framework for evaluating Munoz Ramirez's claim arises from *Zadvydas*, in which the Supreme Court held that detention under § 1231 after entry of a final order of removal is permissible so long as removal is "reasonably foreseeable." 533 U.S. at 699; App.526-28. Because the only barrier to Munoz Ramirez's removal to El Salvador was the withholding-only proceedings, and because ICE viewed Munoz Ramirez as a "priority for removal" based on criminal history and a record of absconding, removal was reasonably foreseeable and *Zadvydas* was satisfied. See App.549.

6. The district court determines that Munoz Ramirez's detention does not violate *Zadvydas*, but concludes that it does violate due process, applying a six-factor analysis.

The district court agreed with the government that the standard set by the Supreme Court in *Zadvydas* was satisfied. The court held

³ As of the filing of Munoz Ramirez's petition, one other district court in the District of Colorado had applied these six factors in a case involving post-removal-order detention under § 1231. See *Juarez v. Choate*, No. 24-cv-00419-CNS, 2024 WL 1012912, at *5-8 (D. Colo. Mar. 8, 2024).

that, under *Zadvydas*, “the question is whether [Munoz Ramirez’s] removal is significantly likely in the reasonably foreseeable future.” App.573. It held that standard satisfied: removal was “reasonably foreseeable because it depends solely on her pending withholding-only proceedings and her Tenth Circuit appeal. Once those proceedings have concluded, she will be either removed or released.” *Id.* The court thus found that Munoz Ramirez’s continued detention did not violate *Zadvydas*.

The court did not stop there, however. Even though *Zadvydas* set the standard for prolonged detention claims under § 1231, the court concluded that the Due Process Clause of the Fifth Amendment set a different standard, evaluated via the six factors of *Singh*. See App.574-75. Those six factors are:

- (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 detainee;
- (5) delays in the removal proceedings caused by the government; and
- (6) the likelihood that the removal proceedings will result in a final order of removal.

App.575 (quoting *Singh*, 2019 WL 3943960, at *5).

In the court’s view, the first three factors favored Munoz Ramirez; the fourth and fifth factors were “relatively neutral;” and the sixth

factor “slightly” favored Munoz Ramirez. App.576-78. Because the factors favored Munoz Ramirez “on balance,” the court concluded that “continued detention requires an individualized bond hearing before an [immigration judge] in order to comport with due process.” App.578.

7. The district court orders a bond hearing at which the government must bear the burden to justify continuing detention by clear and convincing evidence.

The court then crafted its remedy. Although Congress did not provide for bond hearings at all under § 1231 (unlike under § 1226), the court held that Munoz Ramirez was entitled to such a hearing. It further held that, at the mandated bond hearing, the government would “bear the burden to show by clear and convincing evidence that continued detention is justified.” App.579.

The immigration judge held the bond hearing, and Munoz Ramirez was released on bond. App.582-83.⁴

⁴ Unrelated to the issues raised in this appeal, in October of 2025, Munoz Ramirez was arrested in Texas for possession of a controlled substance. App.627. The state declined to press charges. But Munoz Ramirez was re-detained by ICE for violation of bond conditions, which required abstention from the use of illegal drugs and refraining from committing criminal acts. *Id.* Re-detention was thus justified under 8 C.F.R. § 241.4(l)(1) (“Any alien ... who has been released under an

SUMMARY OF ARGUMENT

The district court committed two dispositive legal errors, each of which justifies reversal.

First, while the court correctly concluded that Munoz Ramirez's continued detention did not violate *Zadvydas*, it erred in reaching out for six factors some district courts have applied in the *pre-final-order* context to evaluate the legality of continued detention. In *Zadvydas*, the Supreme Court deployed the canon of constitutional avoidance to confine the scope of § 1231(a)(6) precisely to avoid potential due process concerns. Post-final-order detention that does not violate *Zadvydas* thus does not, by definition, violate due process. Given that even the district court agreed that there is a significant likelihood of removal in the reasonably foreseeable future here, Munoz Ramirez's continued detention did not violate due process.

Even if the Due Process Clause required some test other than *Zadvydas* (it does not), the six factors applied by the district court are ill-suited to the § 1231 context. Of the six factors, most are either

order of supervision or other conditions of release who violates the conditions of release may be returned to custody.”).

inapplicable once a final removal order has been entered or are duplicative of the *Zadvydas* analysis. And to the extent there may be a different due process test for exceptional cases, this case—which is premised on the mere length of detention, the very issue at the heart of the *Zadvydas* analysis—is simply not exceptional.

Second, even if this court were to affirm the grant of habeas relief, the district court still erred in ordering a bond hearing before an immigration judge at which the government would bear the burden to prove, by clear and convincing evidence, that Munoz Ramirez is a danger to the community or poses a risk of flight. This Court has never addressed the proper allocation of the burden at immigration bond hearings, but the Fourth Circuit recently—and correctly—held that the burden should rest with the detainee to prove their suitability for bond. *See Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022). Under the three-part test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), the unique status of immigration detainees and the strong governmental interests in the post-removal-order context show that the burden should properly rest with the detainee.

ARGUMENT

I. *Zadvydas* provides the sole standard for evaluating the lawfulness of post-final-removal-order detention, and the district court thus erred in applying a different six-factor approach.

The district court committed its first error when it concluded that the Due Process Clause provides a standard for evaluating prolonged detention claims under § 1231(a)(6) other than *Zadvydas*. The government argued below that *Zadvydas* provided the sole standard to evaluate Munoz Ramirez's claim, App.526-29, but the court disagreed. App.573-75. This court reviews whether the district court applied the correct legal standard de novo. *See Kabba v. Mukasey*, 530 F.3d 1239, 1244-45 (10th Cir. 2008).

The district court erred by importing the six factors of *Singh* into the post-final-removal-order context presented here. *Zadvydas* definitively settled the question of when prolonged detention can violate due process, and importing a different standard is contrary to *Zadvydas*.

A. In *Zadvydas*, the Supreme Court construed the scope of § 1231 specifically to avoid any possible due process concerns about prolonged detention, so where *Zadvydas* is satisfied, no due process violation based on prolonged detention can be found.

While multiple provisions of the immigration code authorize or require detention of aliens during removal proceedings, *see, e.g.*, 8 U.S.C. §§ 1225 & 1226, once a final order of removal enters, the statutory basis for detention shifts to § 1231. Under that provision, the government “shall detain” the alien for the 90 days following entry of the removal order—the “removal period.” 8 U.S.C. § 1231(a)(1)(A) (setting the removal period); (a)(2)(A) (the government “shall detain” the alien during the removal period).

Once the 90-day removal period ends, the government may release the alien on supervision. 8 U.S.C. § 1231(a)(3). The statute provides that some aliens, however—including those who are inadmissible or removable based on a criminal conviction⁵ and those whom the government determines “to be a risk to the community or unlikely to

⁵ *See* 8 U.S.C. § 1231(a)(6) (citing 8 U.S.C. § 1182 (stating conditions for inadmissibility, including based on certain prior criminal convictions); 8 U.S.C. §§ 1227(a)(1)(C), (a)(2), (a)(4) (same)).

comply with the order of removal”—“may be detained beyond the removal period.” 8 U.S.C. § 1231(a)(6). But the statute is silent regarding the permissible length of detention under § 1231(a)(6) after the removal period ends.

In *Zadvydas*, the Supreme Court filled that gap, and did so in a manner specifically designed to avoid any potential due process violations. The Court recognized that “[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem” under the Fifth Amendment guarantee of due process. 533 U.S. at 690. To avoid that “serious constitutional threat,” the Court interpreted the statute to provide that, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute”—thereby avoiding due process concerns that might be presented by prolonged detention. *Id.* at 699.

The Court held it “presumptively reasonable” for the government to continue to detain an alien ordered removed for the six months following the end of the 90-day removal period. *Id.* at 701. After that six-month period, “once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably

foreseeable future, the Government must respond with evidence to rebut that showing.” *Id.* As long as the government’s evidence demonstrates a significant likelihood of removal in the reasonably foreseeable future, the government may continue to detain the alien. *See id.*

The logic of *Zadvydas* suggests that, where immigration detention is concerned, what matters is not the *length* of detention, but rather the *relationship* between the detention and the governmental interest supporting it. Thus where an alien has been ordered removed but is practically unremovable (as was the case with the petitioners in *Zadvydas*), detention no longer bears a “reasonable relation to the purpose for which the individual [was] committed.” *Zadvydas*, 533 U.S. at 690. Thus, detention becomes non-viable when it is no longer moored to the governmental interest supporting it, not when it simply goes on for too long. *See id.*; *see also Demore v. Kim*, 538 U.S. 510, 528-29 (2003) (mandatory detention pending removal proceedings under § 1226(c) has “a definite termination point” and is supported by the governmental interest of “preventing deportable criminal aliens from fleeing prior to or during their removal proceedings”); *Banyee v.*

Garland, 115 F.4th 928, 932 (8th Cir. 2024) (where immigration detention is concerned, “[t]he *why*, in other words, is more important than *how long*.”).

Zadvydas is a statutory-interpretation case, but one of constitutional dimension. By interpreting the statute to avoid the “serious constitutional threat” of prolonged detention, the Court recognized a limitation on the statute’s permissible reach imposed by the Due Process Clause. And by adopting the “significant likelihood of removal in the reasonably foreseeable future” test, the *Zadvydas* Court confined the outer limits of the statute in a manner intended to avoid due process concerns. So, by application of the constitutional-avoidance canon, the Court ensured that detention that does not exceed the *statutory* limit cannot, by definition, breach the *constitutional* one.

On that basis, the Fourth and Sixth Circuits have rejected due process-based challenges to prolonged detention under § 1231 premised on any standard other than *Zadvydas*. In *Martinez v. Larose*, 968 F.3d 555 (6th Cir. 2020), the Sixth Circuit considered whether “due process requires a bond hearing after a certain amount of time in detention” in § 1231 cases. *Id.* at 565. The court rejected this proposition, observing

that “the Supreme Court has had occasion to consider the constitutional implications of indefinite detention under § 1231(a)” in *Zadvydas*. *Id.* at 566. “In applying the canon of constitutional avoidance,” the Sixth Circuit recognized, “the Court offered us a standard through which to judge indefinite-detention cases—the *Zadvydas* standard.” *Id.* (In 2022, the Supreme Court confirmed that § 1231(a)(6) does not require the government to provide bond hearings at the six-month point. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022).)

Four years later, in *Castaneda v. Perry*, the Fourth Circuit concurred, holding that *Zadvydas* “provides the sole recourse available to a § 1231 detainee challenging his detention on due process grounds.” 95 F.4th 750, 760 (4th Cir. 2024). As the Fourth Circuit succinctly put it, “the *Zadvydas* standard is due process: a § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation.” *Id.* (emphasis in original); see also *Banyee*, 115 F.4th at 933 (rejecting multifactor balancing test for prolonged-detention claims even under § 1226

because “*Zadvydas* and *Demore* have already done whatever balancing is necessary”).⁶

Because *Zadvydas* interpreted § 1231 specifically to avoid the potential due process threats that would be presented by prolonged detention, detention that complies with *Zadvydas* cannot, by definition, violate due process on the basis of length.

Put simply, the Supreme Court accomplished what it set out to do in *Zadvydas*: in construing § 1231 to avoid any possible due process concerns presented by prolonged detention, the Court adopted a standard that does, in fact, avoid any due process concerns. And the fact that Munoz Ramirez’s removal was reasonably foreseeable means

⁶ The Third and Ninth Circuits had held to the contrary, but the statutory aspect of those holdings—that a bond hearing is required under § 1231(a)(6)—was abrogated by *Arteaga-Martinez*. See *Guerrero-Sanchez v. Warden*, 905 F.3d 208 (3d Cir. 2018); *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011). The continued force of the constitutional holdings of those cases is a subject of much debate. See, e.g., *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1198-1201 (9th Cir. 2022) (recounting the long and tortured history of various Ninth Circuit immigration-detention holdings and their mostly unsuccessful trips to the Supreme Court). This court need not address that issue here, however, as it has no analogous circuit precedent, and in any event, the Third and Ninth Circuits erred for the reasons explained by the Fourth and Sixth.

that continued detention here comports with *Zadvydas*, as the district court correctly held.

B. The district court erred in evaluating Munoz Ramirez's claim under the six factors instead of *Zadvydas*.

The district court charted a different course. The court did not stop with its conclusion that there was a significant likelihood of Munoz Ramirez being removed in the reasonably foreseeable future and that the *Zadvydas* standard was satisfied. App.573. Instead, it proceeded to consider whether continued detention violated due process under the six factors of *Singh* applied by some district courts to pre-removal-order detention under § 1226. See App.573-75.

The district court's attempt to engraft the six *pre-removal-order* detention factors of *Singh* onto *post-removal-order* detention was erroneous. In *Zadvydas*, the Supreme Court construed § 1231 in a manner precisely to avoid potential due process concerns and thereby provided a standard that, when satisfied, *necessarily* comports with due process. The Supreme Court did not craft the *Zadvydas* standard with the specific purpose of avoiding any potential due process concerns concerning prolonged detention and then leave the door open to other

due-process challenges based on the *exact same* objection—*i.e.*, prolonged detention. Having construed § 1231 *precisely* to avoid due process issues, the resulting *Zadvydas* standard necessarily does just that: avoids potential due process concerns.

Zadvydas represents the Supreme Court’s definitive answer to the question of when prolonged detention raises potential due process concerns. By adding an entirely independent test for evaluating the legality of prolonged detention, the district court necessarily was disagreeing with *Zadvydas*’s reasoning. The district court implicitly—*but necessarily*—reasoned that the Supreme Court’s avoidance-based construction of § 1231 in fact *failed to avoid* the constitutional concerns and left upon potential constitutional violations even where the *Zadvydas* standard was satisfied. In other words: the district court acted as though the Supreme Court failed to construe § 1231 in a sufficiently narrow manner to avoid constitutional violations presented by prolonged detention.

Munoz Ramirez is free to ask the Supreme Court to revisit its definitive resolution of that question. But the district court was bound by *Zadvydas* in the meantime. *See State Oil Co. v. Khan*, 522 U.S. 3, 20

(1997) (“[I]t is this Court’s prerogative alone to overrule one of its precedents.”); *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (“[U]nless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.”) (per curiam).

By violating the Supreme Court’s reasoning in *Zadvydas*, the district court erred. Its transplantation of the inapposite six-factor *Singh* test into a context where it cannot be reconciled with binding Supreme Court precedent must therefore be reversed.

Moreover, importing the *Singh* factors into the § 1231 context led the district court into two other distinct errors. *First*, the district court’s basis for engrafting the six factors onto § 1231 detention conflicts with Supreme Court precedent. In importing the factors from § 1226 cases into the § 1231 context, the district court adopted without much elaboration the analysis set forth in an earlier case, *Juarez v. Choate*, No. 24-cv-00419-CNS, 2024 WL 1012912, at *6 (D. Colo. Mar. 8, 2024); see App.574-75. The *Juarez* court rejected the government’s position that *Zadvydas* is the sole standard in § 1231 cases by observing

that “there appears to be little substantial distinction between the liberty interest of noncitizens detained pursuant to § 1226(c) and § 1231(a)(6), because ‘regardless of the stage of the proceedings, the same important interest is at stake—freedom from prolonged detention.’” 2024 WL 1012912 at *6 (quoting *Guerrero-Sanchez v. Warden*, 905 F.3d 208, 222 (3d Cir. 2011), *abrogated by Arteaga-Martinez*, 596 U.S. 573).

But while the liberty interest asserted by § 1226 and § 1231 detainees may be similar, the Supreme Court has recognized that those two groups are distinct for purposes of evaluating the constitutionality of prolonged detention. In *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Court considered whether aliens subject to reinstated removal orders under § 1231(a)(5) (like Munoz Ramirez) but who seek withholding of removal (again, like Munoz Ramirez) are properly detained under § 1226 or § 1231. 594 U.S. at 526. The Court determined that the proper basis of detention was § 1231, and in the process recognized significant differences between the interests applicable to detainees in the pre- and post-removal order context. *See id.* at 544.

The Court observed that aliens who have not yet been ordered removed and those subject to final orders of removal “pose[] different risks of flight.” 594 U.S. at 544. Aliens in the pre-removal-order context “are less likely to abscond because they have a chance of being found admissible.” *Id.* After a final removal order has been entered, however, an alien may legally remain only if they obtain withholding-only protection, “and they would seem to still have a chance to get that relief if they absconded and were again apprehended.” *Id.* Moreover, aliens who face removal due to a reinstated final order of removal under § 1231(a)(5) “have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order.” *Id.*

So the Supreme Court in *Guzman Chavez* recognized that there are significant differences between aliens detained under § 1226 and those detained under § 1231. The blithe equation of those two groups by the *Juarez* court and the district court here should not survive the force of *Guzman Chavez*.

Second, whatever its utility may be in the pre-removal-order context,⁷ the six-factor approach is a poor fit in cases involving post-removal-order detention. The six factors are:

- (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 detainee;
- (5) delays in the removal proceedings caused by the government; and
- (6) the likelihood that the removal proceedings will result in a final order of removal.

App.575 (quoting *Singh*, 2019 WL 3943960, at *5).

These six factors, by and large, are ill-suited for the § 1231 context: they either do not apply to § 1231 detention or are duplicative of the issues subsumed in the *Zadvydas* test. Factors 1 and 2 (the length of past and likely future detention) are already encompassed

⁷ This Court has not decided—and the government does not concede—that the *Singh* factors or any multi-factor approach is properly applied in due process prolonged-detention challenges in the *pre-removal* order context. Because that issue is not presented in this post-removal-order § 1231 case, the government will address only the propriety of applying the six factors in this statutory context.

within the *Zadvydas* framework, which is inherently focused on the length of past and future detention as compared to the likelihood of removal in the future. *See, e.g., Zadvydas*, 533 U.S. at 701 (“[F]or detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”). The district court’s test thus shrinks the *Zadvydas* analysis into only two factors out of six.

Factors 4 and 5 (assigning responsibility for delays in the removal proceedings) can never apply in § 1231 cases at all, because in such matters a final order of removal has *already been entered*, so any delays in the removal proceeding (at either party’s behest) will be long past.

To the extent the district court below considered delays in the *withholding-only proceedings* as relevant on these factors, App.577, that analysis is already encompassed in the *Zadvydas* consideration of whether there is a substantial likelihood of removal in the reasonably foreseeable future. And this Court has held that “a judicial review process that has a definite and evidently impending termination point,” like the withholding-only proceedings here, does not render removal insufficiently foreseeable to support continued detention, no matter its

length. *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004); *see also Casteneda*, 95 F.4th at 758 (holding that withholding-only proceedings do not render removal unforeseeable); *G.P. v. Garland*, 103 F.4th 898, 902 (1st Cir. 2024) (same).

Factor 6, in contrast, the “likelihood that the removal proceedings will result in a final order of removal,” will inherently be met in *every* § 1231 case, because by its plain terms, § 1231(a)(6) applies only to aliens already subject to a final order of removal. This again exemplifies the erroneous nature of the district court’s transplantation of *Singh*. It makes little sense for the court to apply a six-factor analysis where the sixth factor is always satisfied.

And it is further not clear why factor 3, the detainee’s conditions of detention, would ever be relevant to the constitutionality of the length of an alien’s detention, as this Court has held that conditions of confinement claims cannot be brought via habeas. *See Rael v. Williams*, 223 F.3d 1153, 1154 (10th Cir. 2000).

At a higher level, labeling these six list-items as “factors” implies a degree of legal precision above the *ipse dixit* that *Singh* represents. The six “factors” are really just facts that a court might deem relevant

in deciding whether detention has extended for too long. They do not provide any precision or compelling reasoning as to how a court should analyze whether the length of detention violates due process in any particular case. The *Zadvydas* test, in contrast, asks the court to answer a single, clear question—whether removal is reasonably foreseeable—and prescribes the consequences that flow from the answer.

C. To the extent *Arteaga-Martinez* left room for as-applied due process challenges in “exceptional cases,” this is no such case.

The *Juarez* court also noted that, in *Arteaga-Martinez*, the Supreme Court “chose not to address” whether the statutory test of *Zadvydas* precludes application of any other constitutional standard in § 1231 prolonged-detention cases. *Juarez*, 2024 WL 1012912, at *6. That may be true as to the entire universe of possible constitutional objections, but *Zadvydas* explicitly and specifically addressed the potential due process concerns presented by prolonged detention in the § 1231 context.

In *Arteaga-Martinez*, the Supreme Court considered post-*Zadvydas* lower-court rulings holding that § 1231(a)(6) required the

government to give detainees a bond hearing at the expiration of six months after the end of the removal period. 596 U.S. at 576. The Court easily repudiated that position: “there is no plausible construction of the text of § 1231(a)(6) that requires the Government to provide bond hearings before immigration judges after six months of detention, with the Government bearing the burden of proving by clear and convincing evidence that a detained noncitizen poses a flight risk or a danger to the community.” *Id.* at 581.

In considering Arteaga-Martinez’s argument that not providing bond hearings under § 1231(a)(6) would raise “serious due process concerns,” the Court noted, among other issues, that the government had stated in its briefing “that as-applied constitutional challenges remain available to address ‘exceptional’ cases.” *Id.* at 583. The Court made no ruling regarding whether or not that was an accurate statement of the law, however, because the issue had not been raised below. *Id.* (“We leave [these issues] for the lower courts to consider in the first instance.”); *see also Castaneda*, 95 F.4th at 761 (“To be clear, the [Supreme] Court only *acknowledged* the government’s position; it did not endorse it.”).

This Court need not decide what constitutes an “exceptional case” in the abstract to conclude that this case does not qualify. First and foremost, the gravamen of Munoz Ramirez’s due process claim below was that the detention had gone on *for too long*. *See, e.g., App.6* (asserting that Munoz Ramirez’s “detention of over 16 months has become unreasonably prolonged and is unconstitutional”). But length of detention (measured against the likelihood of removal) is the precise issue addressed by *Zadvydas*. At a minimum, if a habeas petitioner’s complaint is simply that their post-removal-order detention has continued for too long (as Munoz Ramirez argued here), theirs is not an exceptional case that might justify a departure from *Zadvydas*.

The same is true where the detention has been lengthened only due to proceedings brought at the petitioner’s election. The delay in Munoz Ramirez’s removal is entirely the result of the withholding-only proceedings, which are moving forward in their normal course. Such a delay cannot be the basis for concluding that a particular case is “exceptional.” *See, e.g., Castaneda*, 95 F.4th at 761 (“[B]ecause [petitioner] has failed to show that his removal is not reasonably foreseeable, [his] continued detention while [withholding-only]

proceedings play out aligns with § 1231's basic purpose of assuring [his] presence at the moment of removal.”). Nor has Munoz Ramirez alleged any sort of “bad-faith or careless dilatory conduct” on the part of the government that has needlessly prolonged those proceedings that might render this case exceptional. *See id.*

Next, ICE has not deprived Munoz Ramirez of process altogether in relation to the continued detention. Pursuant to its regulations implementing *Zadvydas*, ICE provided Munoz Ramirez with three custody reviews over the course of 2024, each time concluding that release would pose a public safety concern—an entirely reasonable conclusion given Munoz Ramirez's extensive criminal record and history of absconding—and that there was a significant likelihood of removal in the reasonably foreseeable future. *See* App.547-48; 8 C.F.R. § 241.4(d), (k); *see also* *Arteaga-Martinez*, 596 U.S. at 583 (noting government's reliance on these procedures to satisfy due process); *Castaneda*, 95 F.4th at 761-62 (noting that periodic ICE custody reviews provide process to detainees). Munoz Ramirez certainly disagrees with the results of these reviews, but that does not negate that ICE provided the process set forth in the regulations.

Absent some allegation that would take this case out of the mine run of § 1231 post-removal-order detention challenges, no exceptional circumstances justify a level of due process scrutiny beyond that provided by *Zadvydas*.

* * *

The district court correctly concluded that Munoz Ramirez's continued detention did not violate *Zadvydas*, because there is a significant likelihood of removal in the reasonably foreseeable future. App.572-73. That should have been the end of the analysis, and this court should reverse with instructions that the application for a writ of habeas corpus be denied.

II. The Due Process Clause does not require that the government bear the burden to justify continued detention at immigration bond hearings.

If the court agrees with the government as to the first argument, it need go no further. If, however, it affirms the grant of a bond hearing as constitutionally compelled, it should still reverse as to the allocation of the burden at that hearing before the immigration judge. The government argued below that imposing the burden on it was error. App.539-40. The court disagreed and allocated the burden to the

government. App.578-79. The allocation of the burden of proof is a legal issue this court reviews de novo. *United States v. Smith*, 133 F.3d 737, 746 (10th Cir. 1997).

In allocating the clear-and-convincing evidentiary burden to the government, the district court pointed to *Juarez* and to a footnote in the Third Circuit's decision in *Guerrero Sanchez*. See App.578-79. *Juarez* supported its allocation of the burden based on the "severe" loss of liberty it perceived where an alien is held for a long period of time pending removal. 2024 WL 1012912, at *8. *Guerrero Sanchez*, in turn, relied on since-abrogated Ninth Circuit caselaw to allocate a clear-and-convincing burden on the government. 905 F.3d at 224 n.12.

The appropriate burden at immigration bond hearings under any detention provision is a question that has given rise to a current state of the law that one judge has described as "more than the usual circuit split," but rather "a circuit splat." *Black v. Almodovar*, 156 F.4th 171, 174 (2d Cir. 2025) (Nardini, J., dissenting from rehearing en banc). This court has not addressed the issue, but the appropriate course was recently charted by the Fourth Circuit in *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022), which declined to place the burden on the

government at bond hearings under § 1226(a). This court should follow the same path, with appropriate modifications to address the differing interests at play under § 1231(a)(6).

At the outset, it is important to note that the Supreme Court has repeatedly held that due process standards apply differently in the immigration context. Where immigration is concerned, the Supreme Court has held “over and over,” *Miranda*, 34 F.4th at 359, that “[i]n the exercise of its broad power over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 521. Thus, aliens “are due less process when facing removal hearings” or, as here, detention pending the outcome of withholding-only proceedings, “than an ordinary citizen would have.” *Miranda*, 34 F.4th at 361. Indeed, where immigration is concerned, the judiciary’s role “is limited to determining whether the procedures [chosen by Congress] meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy.” *Landon v. Plasencia*, 459 U.S. 21, 35 (1982).

In *Miranda*, the Fourth Circuit applied the three-factor test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), in determining the process due under the Fifth Amendment. 34 F.4th at 358-59. Under that analysis, the court should consider:

First, the private interest that will be affected by the official action; **second**, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and **finally**, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335 (emphasis added). Here, *Mathews* does not support allocating the burden—by clear and convincing evidence or otherwise—to the government.

The private interest. As to the first prong, the private interest at issue here is freedom from detention, which “lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. The force of that interest, however, is modulated for aliens, like Munoz Ramirez, subject to reinstated orders of removal under § 1231(a)(5) and detention under § 1231(a)(6). Due process “is not a one size fits all proposition.” *Miranda*, 34 F.4th at 359. Instead, the

flexible doctrine “calls for such procedural protections as the particular situation demands.” *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972).

That is particularly so for the class of aliens, like Munoz Ramirez, subject to reinstated orders of removal under § 1231(a)(5) and detention under § 1231(a)(6). For subsection (a)(5) to apply, an alien must have already been removed from the United States once and have returned illegally. 8 U.S.C. § 1231(a)(5) (requiring a finding that the alien has “reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal”). And to be detained under subsection (a)(6), the alien must be inadmissible or removable for, among other reasons, a history of serious criminal convictions or the government’s determination that they pose “a risk to the community or [are] unlikely to comply with the order of removal.” 8 U.S.C. § 1231(a)(6). It is reasonable to conclude that such aliens may constitutionally be afforded a lesser degree of procedural protection—indeed, Congress has already provided as much, by subjecting aliens under (a)(5) to reinstatement of the prior removal order without the procedural protections of a new removal proceeding.

Risk of erroneous deprivation and value of additional safeguards. As to the second factor, placing the burden to show lack of dangerousness or flight risk on the detainee will not create a significant risk of erroneous deprivation of rights. As the *Miranda* court noted, “aliens should know as much or more than the government about their own criminal history, and they should know more than the government about any mitigating evidence related to that history.” 34 F.4th at 362. They should know more than the government about “family or employment information, which could bear on their risk of flight and any danger they pose to the community.” *Id.* And they are better-positioned than the government to present information concerning how they entered the United States and what they have been doing while in the United States. *See id.* In terms of information-access, allocating the burden to the detainee rather than the government is not likely to give rise to a significant risk of erroneous detention.

The value of additional safeguards is also low. The government’s regulations already provide aliens with “the fundamental features of due process—notice and an opportunity to be heard.” *Id.* (citing *Mathews*, 424 U.S. at 333 (“The fundamental requirement of due

process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (cleaned up)). Like all aliens detained under § 1231(a)(6), Munoz Ramirez was provided custody reviews by ICE. *See* App.547-48; 8 C.F.R. § 241.4(d), (k). These reviews addressed the very issues that would be before an immigration judge at a bond hearing: dangerousness, flight risk, and likelihood of removal in the reasonably foreseeable future. *See, e.g.*, App.547. These procedures further reduce the risk of erroneous deprivation if the burden remains with the detainee at any bond hearing. *See also Demore*, 538 U.S. at 528 (“[W]hen the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.”).

The government interest. Finally, consideration of the governmental interest supports placing the burden on the detainee at bond hearings. In the immigration context, the government’s interest in managing the system of both legal immigration and removal of unauthorized aliens is particularly weighty. Indeed, the Supreme Court has held that “[o]ver no conceivable subject is the legislative power of Congress more complete” than immigration. *Reno v. Flores*,

507 U.S. 292, 305 (1993). In considering the process due aliens, “it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon*, 459 U.S. at 34.

The Supreme Court has recognized two governmental interests underpinning § 1231(a)(6). *Zadvydas*, 533 U.S. at 690. First, the government has a strong interest in assuring that aliens subject to removal are physically present to be removed at the appropriate time. *See Demore*, 538 U.S. at 519 (noting that “one of the major causes of the INS’ failure to remove deportable criminal aliens was the agency’s failure to detain those aliens during their deportation proceedings”); *Miranda*, 34 F4th at 364 (“[D]uring the deportation process, that government interest includes detention.”). And the Court has observed that aliens subject to a reinstated removal order under § 1231(a)(5) are more likely to abscond than their pre-removal counterparts. *Guzman Chavez*, 594 U.S. at 544. Because they “have demonstrated a willingness to violate the terms of a removal order” in the past, they are “less likely to comply with the reinstated order.” *Id.* Placing the burden on the detainee rather than the government at a bond hearing

would forward the governmental interest in ensuring that aliens subject to reinstated orders of removal are efficiently removed from the United States.

Second, the government has a strong interest in “protecting the community” from potential crimes by aliens subject to post-removal-order detention under § 1231(a)(6). *Zadvydas*, 533 U.S. at 690. Placing the burden at the bond hearing on the detainee, rather than the government, would serve this interest by giving force to Congress’s instruction that aliens with serious criminal convictions or who are “a risk to the community,” § 1231(a)(6), may be detained pending their removal. (Indeed, Munoz Ramirez’s lengthy criminal record, record of absconding from supervision, and near-immediate drug-related arrest in Texas after release on bond speak to the importance of the government’s interest in protecting the community in this case.)

In sum, none of the three *Mathews* factors supports placing the burden of whether detention or release is appropriate at a bond hearing on the government. The district court’s allocation of the burden on the government should be reversed.

CONCLUSION

The district court erred in going beyond *Zadvydas* to hold that Munoz Ramirez's continued detention violated due process. The judgment should be reversed and remanded with instructions to enter judgment against Munoz Ramirez. In the alternative, if the court holds that a bond hearing was required, it should reverse with instructions that, at a bond hearing, Munoz Ramirez—not the government—must bear the burden to prove lack of dangerousness and flight risk.

STATEMENT CONCERNING ORAL ARGUMENT

This case raises significant legal issues of first impression regarding the intersection between individual rights of aliens and the important governmental interests underpinning the enforcement of immigration law. Oral argument would aid the court in resolving these important issues.

DATED: December 19, 2025

Respectfully submitted,

PETER MCNEILLY
United States Attorney

/s/ KYLE BRENTON
KYLE BRENTON
Assistant United States Attorney

CERTIFICATE OF COMPLIANCE

As required by Fed. R. App. P. 32(a)(7)(B)(i), I certify that the foregoing is proportionally spaced and contains 7,736 words, according to the Microsoft Word software used in preparing the brief.

DATED: December 19, 2025

/s/ KAYLA KEITER
KAYLA KEITER
U.S. ATTORNEY'S OFFICE

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2025, I electronically filed the foregoing with the Clerk of the court for the United States Court of Appeals for the Tenth Circuit, using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ KAYLA KEITER
KAYLA KEITER
U.S. Attorney's Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Regina M. Rodriguez**

Civil Action No. 25-cv-1002-RMR

ALFREDO MUNOZ RAMIREZ, also known as Dayana Munoz Ramirez,

Petitioner,

v.

PAMELA BONDI, in her official capacity as Attorney General of the United States,
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, and
DAWN CEJA, in her official capacity as warden of the Aurora Contract Detention
Facility,

Respondents.

ORDER

This matter is before the Court on the Petition for Writ of Habeas Corpus, ECF No. 1, and Petitioner's Motion for Temporary Restraining Order, ECF No. 2. Respondents have filed a response, ECF No. 10, and Petitioner has replied, ECF No. 11. The Court has reviewed the Petition, the Motion, and the related briefing, and the applicable case law. No party has requested a hearing on the matter, and the Court finds that oral argument would not materially assist in the resolution of these matters. For the following reasons, the Petition for Writ of Habeas Corpus is GRANTED IN PART AND DENIED IN PART and the Motion for Temporary Restraining Order is DENIED AS MOOT.

I. BACKGROUND¹

Petitioner Dayana Munoz Ramirez (“Petitioner”) is a transgender woman from El Salvador.² Petitioner first entered the United States in 1993, when she was approximately 15 years old. Petitioner knew she was transgender from a young age, but felt compelled to hide her gender identity and pursue relationships with women. In her early 20s, she married a woman and had two children who are now adults.

In 2016, Petitioner was placed in removal proceedings based on a 2006 conviction for unlawful taking of a vehicle. Around this time, she disclosed her gender identity to her family, who stopped speaking to her, and her marriage ended. She did not disclose her gender identity in her removal proceedings and referred to herself by her birth name, Alfredo, and used he/him pronouns. The Immigration Judge (“IJ”) denied her applications for relief, ordered removal, and in December 2016 she was removed to El Salvador.

After her removal to El Salvador, Petitioner began living openly as transgender and publicly identifying as a woman. During her time in El Salvador, she faced physical beatings, [REDACTED] and threats to her life at the hands of [REDACTED]

[REDACTED] who targeted her because of her feminine appearance and transgender identity.

[REDACTED].

Around May 2019, fearing for her life, Petitioner fled El Salvador and reentered the United States. Around 2020, Petitioner was convicted of car theft. In November 2023, she

¹ The Court takes these facts primarily from the Complaint, ECF No. 1, and the Evidence Packet and attached exhibits, ECF No. 1-1.

² Petitioner’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, Petitioner is a transgender woman and uses the name Dayana and she/her pronouns. The Court refers to her accordingly.

was taken into immigration custody at the Aurora detention center and housed in a unit dedicated to transgender people. While in immigration custody, she began gender affirming healthcare in the form of hormone therapy.

A. Petitioner's Withholding-Only Proceedings

After being placed in ICE custody, Petitioner was referred for a reasonable fear interview, where she demonstrated a reasonable possibility of facing persecution if she returns to El Salvador. Thereafter, she was placed in withholding-only proceeding, wherein she applied for withholding of removal and Convention Against Torture ("CAT") relief. She appeared *pro se* before the Aurora Immigration Court.

At a hearing on April 4, 2024, the IJ notified the parties she was denying relief, and issued a written decision on May 16, 2024. In that decision, the IJ identified 10 factors that, in her view, supported an adverse credibility finding. The IJ denied all relief based on lack of corroboration. The IJ also found Petitioner statutorily barred from withholding of removal, finding that her 2006 conviction for unlawful taking of a vehicle constituted a particularly serious crime. Finally, the IJ denied CAT protection, reasoning that Petitioner had not identified as transgender outside of removal proceedings and did not intend to do so in the future. Petitioner timely appealed the decision to the Board of Immigration Appeals ("BIA") and obtained counsel to assist in filing an appellate brief.

On October 28, 2024, the BIA affirmed the IJ decision over a dissent. The majority opinion found that Petitioner was ineligible for withholding of removal and CAT relief based on the adverse credibility finding. The dissenting Board member stated that she would have reversed and remanded the IJ's decision because "the applicant has shown

clear error in several of the central bases for the Immigration Judge's finding that the applicant was not credible," such as the IJ finding implausible "the timing of when the applicant began identifying as transgender" and "the Immigrations Judge's characterization of her use of a chosen name as an inconsistency." ECF No. 1-1 at 438-442.

On November 20, 2024, Petitioner filed a motion to reopen and a motion for emergency stay of removal with the BIA. On November 26, 2024, Petitioner filed a petition for review and a motion for an emergency stay of removal before the Tenth Circuit. See *Munoz-Ramirez v. Bondi*, Case No. 24-9572 (10th Cir. 2024). On December 4, 2024, the BIA granted a stay of removal. The next day, the Tenth Circuit separately granted a stay of removal. Based on her pending motion to reopen before the BIA, Petitioner filed a joint motion to hold the briefing schedule in abeyance before the Tenth Circuit, which was granted.

On March 10, 2025, the BIA issued a decision denying Petitioner's motion to reopen, finding that she had presented "highly material" evidence to her protection claim, including medical records demonstrating her transgender identity, but that she had failed to demonstrate the evidence was previously unavailable and denied the motion to reopen because Petitioner had not demonstrated exceptional circumstances.

On March 26, 2025, Petitioner 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. On March 27, 2025, the Court consolidated her petitions, lifted

abatement, and ordered that Petitioner file her opening brief 40 days after the Agency Record is filed.

B. Petitioner's Current Confinement

Petitioner is currently detained at the Denver Contract Detention Facility in Aurora, Colorado (the "Aurora Facility"), where she has been held throughout the entirety of her withholding-only proceedings. Although she is housed in a dedicated transgender unit, she contends that she has endured substantial harm in detention and her continued confinement only increases these dangers. She attests that she faces daily verbal harassment by cisgender men who are detained whenever she leaves her pod, and that these individuals regularly subject her to degrading comments, catcalling, and other forms of harassment that make her feel unsafe in detention. She also states that she has been subjected to threats and intimidation by detention staff.

Petitioner reports that while in detention she has also experienced severe medical neglect related to multiple dental problems and mental health conditions. She states that she has not been able to see a dentist for over a year. Instead, she claims she has been given only pain medication and a gel, which have become ineffective over prolonged use. Petitioner asserts that despite filing multiple medical requests and grievances, her urgent need for medical care remains unaddressed. As to her mental health, Petitioner states she struggles with anxiety and a sleeping disorder, both of which have worsened significantly since her detention. She attests that a recent attempt to treat her anxiety resulted in a prescription of medication at too high a dose, which caused severe side

effects. Although the dosage was eventually adjusted, she claims nothing has been done to address the underlying stress and anxiety caused by her detention.

Petitioner also notes that recent policy changes have created additional risks to her safety. She references Executive Order 14166, 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.³ Additionally, the Executive Order requires the Bureau of Prisons to revise its policies to eliminate federal funding for gender-affirming medical care in detention. Although Petitioner has not yet been impacted by these policy changes, she asserts that 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 and further underscores the urgent need for her release.

Petitioner claims she has a viable plan for release—H. Casa Marianella, a haven for immigrants in Austin Texas, has agreed to provide Petitioner with access to supportive housing, basic necessities, and connections to social services, including gender-affirming medical care and mental health services. She also intends to comply with all the conditions of her release and attend all future hearings.

On March 28, 2025, Petitioner filed her Petition for Writ of Habeas Corpus, which also states a Fifth Amendment procedural due process claim. In her Petition, Petitioner asserts that she will remain detained for many more months, or potentially years, while

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

the Tenth Circuit adjudicates her claims. Moreover, even if she wins her appeal, her case will not be automatically resolved as she will have to wait for remand to the BIA and then ask the BIA to remand her case to the IJ. Accordingly, Petitioner asks the Court to issue a writ of habeas corpus and order her immediate release or, in the alternative, order that Respondents provide her with a bond hearing before an immigration judge (“IJ”) within seven days, at which hearing Respondents bear the burden of establishing that continued detention is warranted by clear and convincing evidence.

Petitioner also filed a Motion for Temporary Restraining Order, requesting her immediate release or, in the alternative, that she be presented before a neutral adjudicator within seven days of the Court’s order to determine whether her continued detention serves a legitimate purpose. ECF No. 2.

II. LEGAL STANDARD

A. Habeas Corpus Relief

Section 2241 of Title 28 authorizes a court to issue a writ of habeas corpus when a person is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Habeas corpus proceedings under 28 U.S.C. § 2241 “remain available as a forum for statutory and constitutional challenges to post-removal-period detention.” *Singh v. Choate*, No. 23-cv-02069-CNS, 2024 WL 309747, at *1 (D. Colo. Jan. 26, 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)); see also *Hernandez-Ceren v. Wolf*, No. 20-cv-01628-RM, 2020 WL 3036074, at *1 (D. Colo. June 6, 2020) (“[A] person subject to removal is in custody for habeas purposes.”).

The writ of habeas corpus is designed to challenge “the fact or duration” of a person's confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). “In other words, habeas corpus, and thus § 2241, offers detainees release from custody when the very fact that they are detained, or detained for a certain length of time, is unlawful.” *Codner v. Choate*, No. 20-cv-01050-PAB, 2020 WL 2769938, at *4 (D. Colo. May 27, 2020).

B. Post-Removal Detention Under § 1231

Two sections of the Immigration and Nationalization Act (“INA”) authorize detention—8 U.S.C. § 1226, which concerns noncitizens who are not yet subject to a removal order, and 8 U.S.C. § 1231, which operates in the post-removal context. Petitioner is detained pursuant to § 1231. Under § 1231, “when a [noncitizen] is ordered removed, the Attorney General shall remove the [noncitizen] from the United States within a period of 90 days.” § 1231(a)(1). The noncitizen must be detained during this initial 90-day timeframe, see § 1231(a)(2), which is “referred to as the ‘removal period,’ ” § 1231(a)(1)(A). If the noncitizen “does not leave or is not removed within the removal period,” then he or she is normally subject to supervised release. § 1231(a)(3). However, certain categories of noncitizens who have been ordered removed—including inadmissible or criminal noncitizens, or noncitizens whom the Attorney General has determined are a risk to the community or are unlikely to comply with the removal order—“may be detained beyond the removal period.” § 1231(a)(6). The text of the INA does not contain an express limit on the duration a noncitizen may be detained under its authority.

Separate but closely related, if a noncitizen is found to have reentered the United States illegally after having been removed pursuant to a removal order, the prior removal

order “is reinstated from its original date and is not subject to being reopened or reviewed,” and the noncitizen “shall be removed under the prior order at any time.” § 1231(a)(5). In such cases, while this provision “generally foreclos[es] discretionary relief from the terms of the reinstated order,” *Fernandez-Vargas v. Gonzalez*, 548 U.S. 30, 35 (2006), a noncitizen may still “pursu[e] withholding-only relief to prevent DHS from executing his removal to the particular country designated in his reinstated removal order” *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2282 (2021).

C. Temporary Restraining Order

To obtain a temporary restraining order, the moving party must establish “(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest.” *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016) (quotation omitted); see also *Wiechmann v. Ritter*, 44 F. App'x 346, 347 (10th Cir. 2002) (the standard for a temporary restraining order is the same as the standard for a preliminary injunction). A party seeking an injunction must demonstrate that “all four of the equitable factors weigh in its favor,” *Sierra Club, Inc. v. Bostick*, 539 F. App'x 885, 888 (10th Cir. 2013), and a “plaintiff's failure to prove any one of the four preliminary injunction factors renders its request for injunctive relief unwarranted,” *Vill. of Logan v. U.S. Dep't of Interior*, 577 F. App'x 760, 766 (10th Cir. 2014).

Certain types of preliminary injunctions, such as injunctions that alter the status quo or injunctions that require the nonmoving party to take some affirmative action, “are disfavored.” *State v. U.S. Env’t Prot. Agency*, 989 F.3d 874, 883 (10th Cir. 2021). To obtain a “disfavored” injunction, the moving party must “make a heightened showing of the four factors.” *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009); *Colorado v. Griswold*, 99 F.4th 1234, 1240 n.4 (10th Cir. 2024). Because a temporary restraining order is “an extraordinary remedy never awarded as of right,” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), the moving party’s right to relief must be clear and unequivocal, *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005).

III. ANALYSIS

A. Habeas Relief Under 28 U.S.C. § 2241

First, Petitioner argues that her prolonged detention violates due process. The parties dispute the applicable test for the constitutionality of her detention. Petitioner contends that the Court should apply the six-factor test adopted in *Singh v. Choate*, No. 19-cv-00909-KLM, 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019). Respondents contend this test is inappropriate; instead, they urge the Court to analyze Petitioner’s detention only under the standard set forth by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

The Court concludes that both tests are relevant to Petitioner’s circumstances here and addresses each in turn. For the following reasons, the Court finds that under *Zadvydas*, Petitioner’s detention is permissible. However, under *Singh*, Petitioner’s prolonged detention without a bond hearing violates the Fifth Amendment’s due process

guarantees. Accordingly, while Petitioner's immediate release is not warranted, the Court finds that Petitioner is entitled to an individualized bond hearing.

1. Detention Under § 1231 and *Zadvydas*

In *Zadvydas*, the U.S. Supreme Court held that the due process clause prohibits the government from detaining immigrants indefinitely. Specifically, the *Zadvydas* Court held that although § 1231(a)(6) does not specify a time limit on how long DHS may detain a noncitizen in the post-removal period, that statute “does not permit indefinite detention.” 533 U.S. at 689. Rather, “in light of the Constitution’s demands,” a noncitizen may be detained only for “a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” *Id.*; accord *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). According to the *Zadvydas* Court, the period reasonably necessary to effect the noncitizen’s removal is presumptively six months. *Zadvydas*, 533 U.S. at 701; see *Arteaga-Martinez*, 596 U.S. at 587 (Breyer, J., concurring). However, this presumption does not trigger a per se release of every noncitizen at the six-month mark—“[t]o the contrary, [a noncitizen] may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added).

Here, Petitioner has been detained for more than 505 days—nearly three times the presumptive limit set forth in *Zadvydas*. While this is undoubtedly a lengthy confinement, “the concern animating the Supreme Court’s decision in *Zadvydas* was not just *prolonged* detention—it was *indefinite* detention of noncitizens who have no prospect of removal at any point in the future.” *Juarez v. Choate*, No. 1:24-CV-00419-CNS, 2024

WL 1012912, at *4 (D. Colo. Mar. 8, 2024) (emphasis in original) (citing *Zadvydas*, 533 U.S. at 695). Thus, the question is whether Petitioner's removal is significantly likely in the reasonably foreseeable future. If so, then the Constitution does not require her immediate release.

The Court concludes that Petitioner's removal is reasonably foreseeable because it depends solely on her pending withholding-only proceedings and her Tenth Circuit appeal. Once those proceedings have concluded, she will be either removed or released. See *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (explaining that the detention of a noncitizen during an appeal is "associated with a judicial process that has a definite . . . termination point," and is "neither indefinite nor potentially permanent"); *M.P. v. Joyce, et al.*, No. 1:22-cv-06123, 2023 WL 5521155, at *4 (W.D. La. Aug. 10, 2023) ("[D]etention is neither indefinite nor potentially permanent where the delay in removal is directly attributable to the litigation activity of the [noncitizen]."); *Portillo v. Decker*, No. 21 Civ. 9506, 2022 WL 826941, at *5 (S.D.N.Y. Mar. 18, 2022) ("For obvious reasons, a noncitizen's use of the American judicial process, to the extent it delays removal, does not warrant release under *Zadvydas*"). Accordingly, *Zadvydas* does not require her immediate release.

2. Detention Without an Individualized Bond Hearing

While the Court does not find that Petitioner's immediate release is appropriate under *Zadvydas*, the question remains whether her continued detention without an individualized bond hearing violates the Fifth Amendment's due process clause. The Court finds that it does.

It is “well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Indeed, this protection applies to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Id.* at 690. Under these due process principles, civil immigration detention is constitutional only in “certain special and narrow nonpunitive circumstances,” and it must “bear a reasonable relation to the purpose” for which the noncitizen was detained. *Id.* (citations, brackets, and quotation marks omitted). The Supreme Court has identified those purposes as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; accord *Demore*, 538 U.S. at 527–28. And when a noncitizen’s detention becomes unreasonably prolonged in relation to these purposes, his or her continued detention may violate the Fifth Amendment. As such, noncitizens detained under § 1231(a)(6) past the *Zadvydas* six-month presumptively constitutional period may bring an as-applied due process challenge to his or her detention under the statute. See *Arteaga-Martinez*, 596 U.S. at 583.

Here, Petitioner brings an as-applied due process challenge to her detention, arguing that an individualized bond hearing is required. In *Juarez v. Choate*, Judge Sweeney addressed this issue and noted that there is “some ambiguity about the proper framework to analyze Fifth Amendment due process challenges for individuals . . . who

are being detained under § 1231(a)(6).” 2024 WL 1012912, at *6. However, after reviewing the case law and the Supreme Court’s recent decision in *Arteaga-Martinez*, Judge Sweeney concluded that it is appropriate to examine detention pursuant to § 1231 under the *Singh* six-factor test. *Id.* In reaching this conclusion, Judge Sweeney rejected the same argument Respondents make here, finding that “there appears to be little substantial distinction between the liberty interest of noncitizens detained pursuant to § 1226(c) and § 1231(a)(6), because ‘[r]egardless of the stage of the proceedings, the same important interest is at stake—freedom from prolonged detention.’ ” *Id.* (quoting *Guerrero-Sanchez*, 905 F.3d at 222). The Court agrees with Judge Sweeney’s reasoning in *Juarez*. Accordingly, the Court will analyze Petitioner’s Fifth Amendment due process claim under the *Singh* framework.

Under *Singh*, to determine whether a noncitizen’s detention has become so prolonged as to violate due process, courts consider six factors:

- (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 detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.

Singh, 2019 WL 3943960, at *5.

First, as noted above, it is undisputed that Petitioner has been detained for over 505 days—well over the presumptive six month limit set forth in *Zadvydas*. Thus, the first factor weighs in Petitioner’s favor. See, e.g., *Villaescusa-Rios v. Choate*, No. 20-cv-03187-CMA, 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021) (collecting cases). Similarly, the second factor weighs in Petitioner’s favor because the likely duration of future

detention is lengthy. She currently has two petitions for review pending before the Tenth Circuit. The Agency record has not been filed, and no briefing schedule has been set. She is likely to spend many more months—if not years—in detention while the Tenth Circuit adjudicates her case, and more beyond that if the Tenth Circuit remands for further proceedings. Thus, this factor weighs in her favor. See *Villaescusa-Rios*, 2021 WL 269766, at *3 (“While her ‘detention will definitely terminate at some point, [] that point is likely to be many months or even years from now.’ ”(quoting *Singh*, 2019 WL 3943960, at *6).

Third, the Court considers the conditions of Petitioner’s detention. This factor requires the Court to look to whether conditions of immigration detention are “meaningfully different” from penal institutions, and this factor favors the petitioner where respondents fail to explain how immigration detention “differ[s] from penal confinement.” See *Singh v. Garland*, No. 21-CV-00715-CMA, 2021 WL 2290712, at *4 (D. Colo. June 4, 2021), *appeal dismissed* (Aug. 5, 2021). Petitioner represents that the conditions of her detention are poor and have exacerbated her physical and mental health complications. Moreover, courts in this District have found that conditions in the Aurora facility are not meaningfully different from criminal detention. See *id.* at *4 (finding conditions at the Aurora facility to be essentially equivalent to criminal incarceration); *Singh*, 2019 WL 3943960, at *6 (same); *de Zarate v. Choate*, No. 23-CV-00571-PAB, 2023 WL 2574370, at *4 (D. Colo. Mar. 20, 2023) (“[C]ourts have concluded that [the Aurora facility] is enough like a corrections facility for this factor to favor” individuals subject to immigration detention) (citing *Daley*, 2023 WL 2336052, at *4). Thus, this factor also favors Petitioner.

The fourth and fifth factors look to delays caused by Petitioner and the government, respectively. As Respondents point out, Petitioner has caused certain delays by initiating withholding-only proceedings, seeking briefing extensions, and seeking stays of her removal. However, there is no indication that Petitioner engaged in improper dilatory tactics, and Courts have not held this factor against petitioners who have engaged in good faith efforts to obtain counsel and seek relief through all legal channels available against them, as Petitioner has done here. *See, e.g., Juarez*, 2024 WL 1012912, at *7; *Villaescusa-Rios*, 2021 WL 269766, at *4; *Singh*, 2019 WL 3943960, at *6. At the same time, there is no indication that the Government is responsible for the delays in Petitioner's removal proceedings. Accordingly, the fourth and fifth factors are relatively neutral.

Finally, the Court considers the likelihood that removal proceedings will result in Petitioner's removal. Petitioner contends she "has a viable claim for relief under withholding of removal and protection under CAT based on her past persecution and torture, as well as evidence supporting her well-founded fear of future harm." ECF No. 1 at 27. On the other hand, Respondents argue "this factor favors the government because a final removal order already exists And, even if Petitioner is granted withholding-only relief, she still may be removed at any time to another country." ECF No. 10 at 14. The Court finds that this factor weighs slightly in Petitioner's favor given the BIA's recognition of the significant threat to transgender women in El Salvador, and the testimony of her past persecution and torture. *See Juarez*, 2024 WL 1012912, at * 7. Further, there was a dissent in her BIA appeal, wherein the dissenting Board member noted she would have reversed and remanded the IJ's decision, supporting that her claim

has at least some merit. Thus, the Court finds this factor slightly weighs in Petitioner's favor.

The Court finds that, on balance, the factors favor Petitioner. Accordingly, her continued detention requires an individualized bond hearing before an IJ in order to comport with due process.

B. Bond Hearing

Having found that Petitioner is entitled to an individualized bond hearing, the Court next considers Petitioner's arguments regarding the burden of proof at that hearing. Petitioner asks for an individualized bond hearing where the government bears the burden of establishing by clear and convincing evidence that continued detention is justified. ECF No. 1 at 32-33. Respondents disagree, arguing that the burden should remain on Petitioner.

Respondents are correct that, on its face, § 1231 does not require the government to provide noncitizens with a bond hearing at all, let alone one in which the burden is allocated to the government. However, because Petitioner's "entitlement to a bond hearing in this case emanates from the Due Process Clause, not from the post-removal detention statute . . . the Court is persuaded that placing the burden of proof on the government comports with due process requirements." *Juarez*, 2024 WL 1012912, at *8 (citing *Cabrera Galdamez v. Mayorkas*, No. 22 Civ. 9847 (LGS), 2023 WL 1777310, at *8-9 (S.D.N.Y. Feb. 6, 2023); *Michelin v. Oddo*, No. 3:23-cv-22, 2023 WL 5044929, at *8 (W.D. Pa. Aug. 8, 2023); *Zavala*, 2022 WL 684147, at *6; *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 212–14 (3d Cir. 2020)). The Court agrees with the

Third Circuit's reasoning that "aliens facing 'prolonged detention' under § 1231(a)(6) are entitled to a bond hearing at which the Government must justify the alien's continued detention by clear and convincing evidence . . . [b]ecause the alien's potential loss of liberty is so severe . . . he should not have to share the risk of error equally." *Guerrero-Sanchez*, 905 F.3d at 224 & n.12. Thus, at the bond hearing, the government will bear the burden to show by clear and convincing evidence that continued detention is justified.

C. Remaining Requests for Relief

In addition to requesting the Court to order Respondents to show cause why the Petition should not be granted and for an individualized bond hearing—both of which have been granted—Petitioner also asks the Court for the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring petitioner outside of the jurisdiction of the District of Colorado pending the resolution of this case;
- (3) Issue a writ of habeas corpus directing Respondents to release Petitioner;
- (4) Award Petitioner her costs and reasonable attorneys' fees 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 the law; and
- (5) Grant further relief as this Court deems just and proper.

ECF No. 1 at 33. For the reasons set forth above, the Court assumes jurisdiction and denies as moot the second request and denies the third request, given the entry of this Order. As to her request for attorneys' fees, she must file a separate motion, see D.C.COLO.LCivR 7.1(d), for attorney fees supported by affidavit, see D.C.COLO.LCivR

54.3(a). As such, she may file a motion for attorney's fees that complies with the Local Rules.

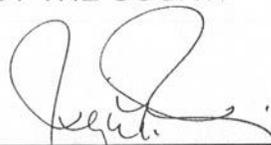
IV. CONCLUSION

Consistent with the foregoing, the Court ORDERS as follows:

- (1) Petitioner's Petition for Writ of Habeas Corpus, ECF No. 1, is DENIED IN PART and GRANTED IN PART;
- (2) Petitioner's Motion for Temporary Restraining Order, ECF No. 2, is DENIED AS MOOT;
- (3) On or before May 12, 2025, Respondents shall take Petitioner before an impartial adjudicator for a constitutionally adequate, individualized bond hearing, in which (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 Petitioner's ability to pay a bond; (3) the adjudicator may not give undue weight to allegations underlying dismissed criminal charges; (4) the adjudicator may not place undue weight on unauthenticated or antiquated documents regarding alleged criminal legal contacts; and (5) the adjudicator must take into consideration Petitioner's mental health diagnoses and trauma when considering criminal legal contacts.

DATED: May 5, 2025

BY THE COURT:



REGINA M. RODRIGUEZ
United States District Judge