IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

KHRISTYNE BATZ BARRENO, f/k/a **FREDY RICARDO BATZ BARRENO,**

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as the warden of the Aurora Contract Detention Facility; **PAMELA BONDI,** in her official capacity as Attorney General of the United States; **KRISTI NOEM,** in her official capacity as Secretary of the Department of Homeland Security; **TODD M. LYONS**, in his official capacity as Acting Director of Immigration and Customs Enforcement; and **ROBERT GUADIAN,** in his official capacity as Field Office Director of the ICE Enforcement and Removal Operations Denver Field Office,

Respondents.

Case No. 25-cv-3017

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Khristyne Batz Barreno ("Ms. Batz") is an indigenous, transgender woman from Guatemala who has sought asylum and other relief in this country because of repeated sexual assaults at the hands of Guatemalan police and other harassment, abuse, and persecution in her native country. She has been detained in the custody of Immigration and Customs Enforcement (ICE) for over 14 months – 440 days – without a constitutionally adequate bond hearing. To make matters worse, she is detained as a transgender woman in a facility with cisgender male prisoners, and she has been subjected to physical and sexual violence, along with deplorable conditions of

confinement. Ms. Batz's immigration case remains pending and may continue for many more months, or even years, leaving her subject to detention for an indeterminate period of time in conditions that courts in this district have found abhorrent and indistinguishable from penal incarceration. This Verified Petition for Writ of Habeas Corpus seeks a bond hearing for Ms. Batz at which the government will bear the burden of showing by clear and convincing evidence that her continued incarceration is warranted.

2. Ms. Batz's continued imprisonment is unconstitutional because at the only bond hearing she was afforded, the burden was placed on her to prove two negatives – that she was not a flight risk and that she was not a danger. The First and Second Circuits and numerous district courts, including at least one court in this district, have held that the Due Process Clause requires a new bond hearing in cases like Ms. Batz's, one at which DHS bears the burden of demonstrating by clear and convincing evidence that she is a flight risk or a danger to the community.

PARTIES

3. Petitioner Khristyne Batz Barreno, born as Fredy Ricardo Batz Barreno, is a native of Guatemala and a refugee in this country who is seeking asylum and withholding of removal under the Immigration and Nationality Act (INA) and Convention Against Torture (CAT) because of her fear of future persecution if returned to Guatemala. She is presently detained at the ICE Denver Contract Detention Facility in Aurora, Colorado (the "Aurora facility").

4. Respondent Juan Baltazar is the warden of the Aurora facility where Ms. Batz is confined. As such, he is the legal custodian of Ms. Batz. He is sued in his official capacity.

5. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. She is responsible for the administration of the immigration laws as exercised

by the Executive Office of 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 administrating Ms. Batz's removal and bond proceedings, as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Ms. Batz.

6. Respondent Kristi Noem is named in her official capacity as the Secretary of the Department of Homeland Security (DHS). In that 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 (Nov. 25, 2003); see also 8 U.S.C. § 1103(a). She routinely transacts business in the District of Colorado, supervises Respondents Lyons and Guadian, and is legally responsible for Ms. Batz's incarceration and removal. She is therefore a legal custodian of Ms. Batz.

7. 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. Respondent Lyons is a legal custodian of Ms. Batz.

8. Respondent Robert Guadian is the ICE Denver Field Office Director and is responsible for carrying out ICE's immigration detention operations in Colorado. Respondent Guadian is a legal custodian of Ms. Batz. He is sued in his official capacity.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the laws and Constitution of the United States, specifically the INA, 8 U.S.C. § 1101, *et seq.*; 28 U.S.C. § 2241 (habeas corpus); and U.S. Const. Amend. V (Due Process Clause).

10. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-42 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

11. This Court may grant declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); Fed. R. Civ. P. 57 and 65; and its inherent authority to grant equitable relief.

12. Venue is proper under 28 U.S.C. § 1391(b)(2) and (e) because Respondents are jailing Petitioner within the jurisdiction of this Court and because at least one Respondent resides in this district and a substantial part of the events giving rise to the claim occurred in this district.

EXHAUSTION

13. Exhaustion is not required under 28 U.S.C. § 2241. *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024) ("the government admits administrative exhaustion is not required by statute").

14. Exhaustion is also unnecessary if futile, which it is in this case for two reasons. First, the Board of Immigration Appeals (BIA) has already rejected Ms. Batz's argument that DHS must demonstrate by clear and convincing evidence that those it jails must remain incarcerated. *Matter of R-A-V-P-*, 27 I. & N. Dec. 803 (BIA 2020). Second, the BIA ruled on September 5, 2025 that individuals in Ms. Batz's situation are not eligible for bond hearings in any event. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

15. Ms. Batz exhausted the limited administrative remedies available. She sought and received a bond hearing before the immigration court, at which the immigration judge (IJ) placed

the burden on her to demonstrate two negatives: that she is not a flight risk and that she is not a danger to the community. On January 6, 2025, the immigration court denied Ms. Batz bond because she did not have any relatives who were legal residents of the U.S., and thus it considered her a flight risk.

16. Exhaustion is therefore satisfied because: (a) Congress did not require exhaustion under these circumstances; (b) the pursuit of administrative remedies is futile; and (c) Ms. Batz exhausted the limited remedies available.

STATUTORY TEXT AND FRAMEWORK

17. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *Jennings*, 138 S.Ct. at 841; *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).

18. Not everyone in immigration proceedings can qualify for a bond hearing; Congress has set limits on who is eligible for release. If detention falls under 8 U.S.C. § 1225, § 1226(c), or § 1231, immigration judges (IJs) typically lack jurisdiction to issue bond. When detention falls within the scope of § 1226(a), IJs have jurisdiction and can issue discretionary bond if they find that the person does not pose a risk to the community, a flight risk, or threat to national security. *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). Individuals seeking bond generally may only request bond on a single occasion, absent a showing of changed circumstances. 8 C.F.R. § 1003.19(e).

19. Section 1226(a) of Title 8 of the U.S. Code provides, in relevant part:

(a) Arrest, Detention, and Release:

> On a warrant issued by the Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States. Except as provided in subsection I and pending such decision, the Attorney General –
> (1) may continue to detain the arrested [noncitizen]; and
> (2) may release the [noncitizen] on –
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or,
> (B) conditional parole

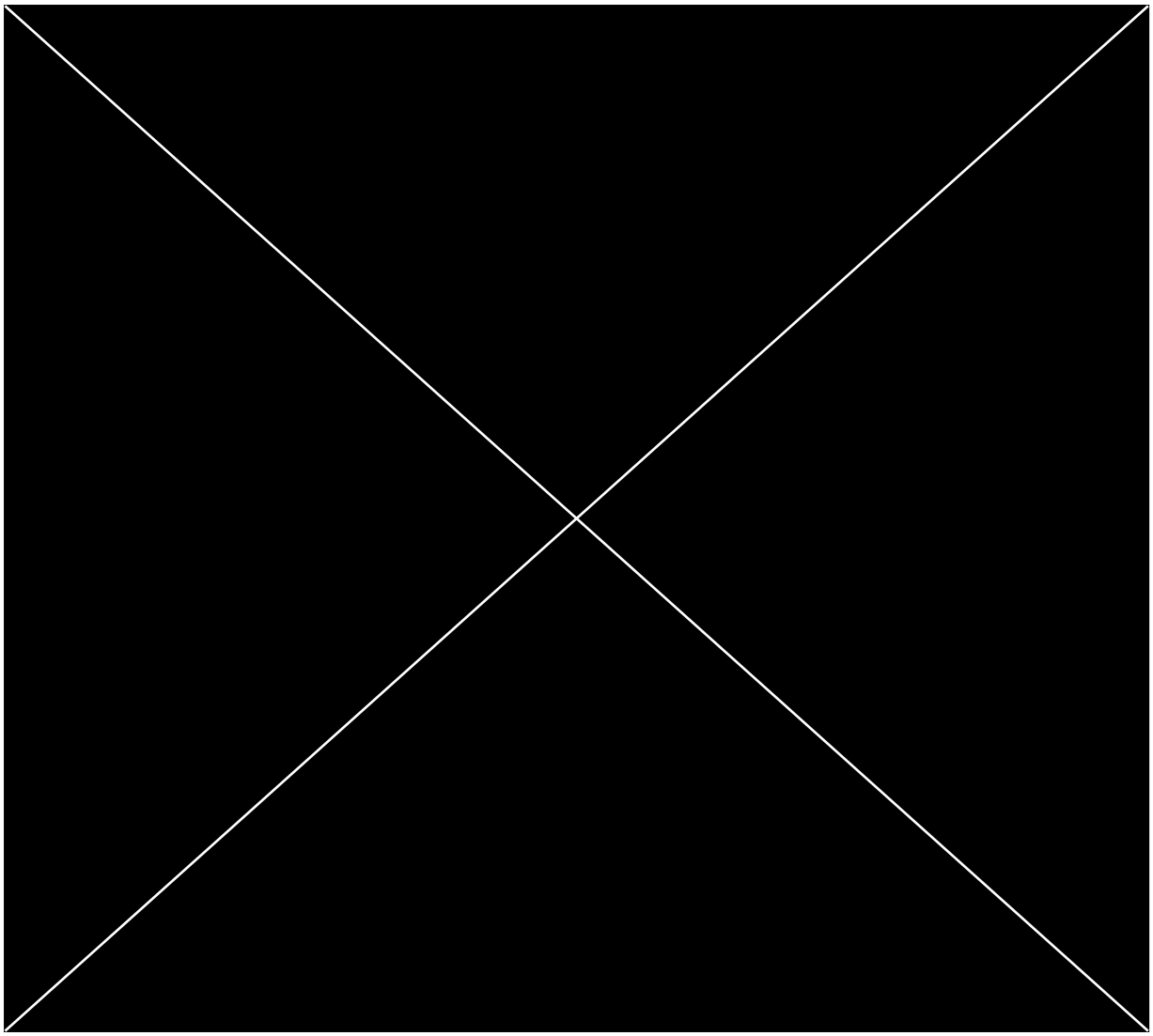
20. Until September 5, 2025, all parties would have agreed that Ms. Batz was detained under 8 U.S.C. § 1226(a). However, with the BIA decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Respondents now contend that she is mandatorily detained without bond pursuant to 8 U.S.C. § 1225(b). Notably, not a single district court has endorsed this position, while more than two dozen have rejected it.[1] In any event, Respondents' change in position only strengthens Ms. Batz's case: under § 1226(a), she had at least a theoretical possibility of a second

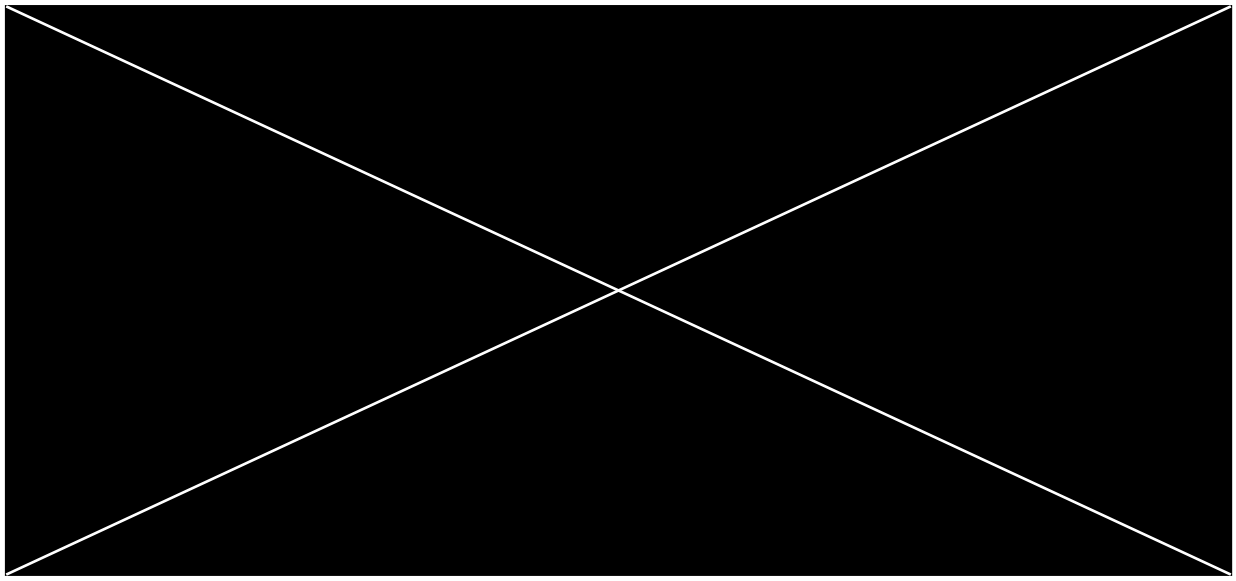
[1] For a nonexhaustive list of district courts to reject the BIA's argument, *see, e.g., Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampaio v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-2428 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Lyons*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Rosado v. Bondi*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *O.E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Escalante v. Bondi,* 2025 WL 2212104 (D. Minn. July 31, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodrigues de Oliveira v. Joyce*, 2025 WL 1826118 (D. Me. July 2, 2025); *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wash. April 24, 2025).

bond hearing if her circumstances changed, but now she will never receive a new bond hearing absent intervention from this Court.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

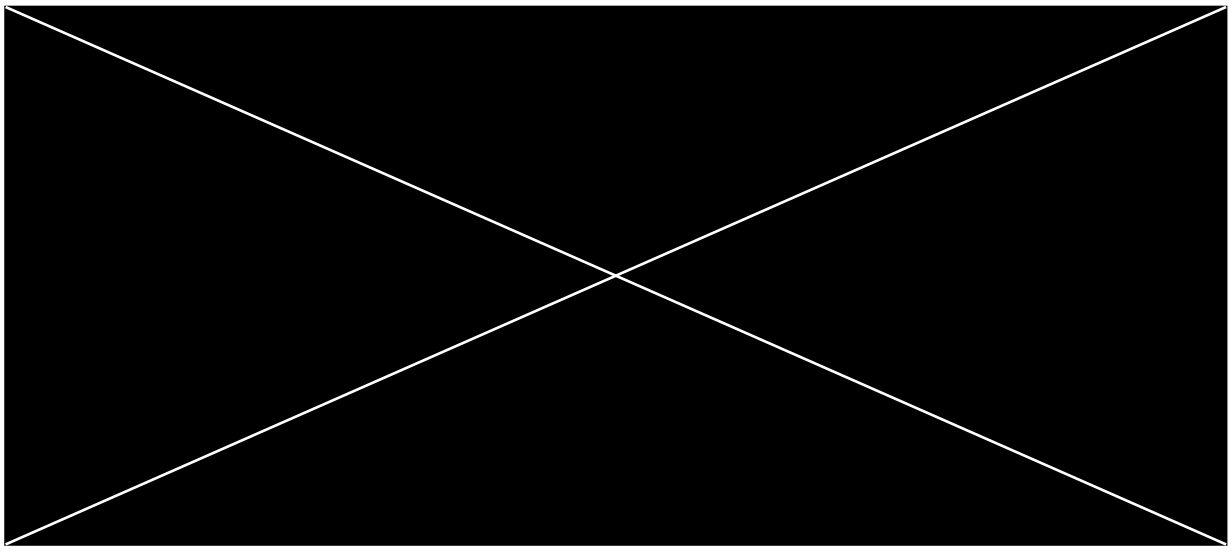
21. Ms. Batz was born and grew up in Totonicapán, Guatemala. She is presently 26 years old.





29. Shortly after she moved out of her parents' house, she met and moved in with a Guatemalan boyfriend; however, his family, too, kicked them out, and the two of them decided to come to the United States in search of a place where they could be safe from persecution and harassment.

30. Ms. Batz and her boyfriend entered the United States by crossing the Rio Grande at Laredo and arrived in August 2018 in Houston, where she worked various jobs as a tailor.



[redacted]

33. [redacted] falsely accused her of having robbed him, which resulted in her being taken into custody by ICE.

34. Ms. Batz was taken into custody by ICE on or about July 12, 2024, and has been incarcerated at all times since, for a period now exceeding 14 months, or 440 days.

35. On September 3, 2024, Ms. Batz filed a form I-589, seeking asylum and withholding of removal under the INA and CAT. In her application, she cited her fear of persecution based on her transgender identity, her membership in a disfavored indigenous ethnic group, and her mental health. She also filed extensive documentary evidence with the immigration court, including reports from the State Department, Human Rights Watch, and others, showing the dangerous conditions faced by transgender individuals in Guatemala, including numerous murders, as well as anti-LGBT legislative activity, and other discrimination, abuse, and persecution.

36. On April 8, 2025, Ms. Batz had her final merits hearing in immigration court. Although both 8 U.S.C. § 1229a(b)(4)(C) and 8 C.F.R. § 1240.9 require immigration court hearings to be recorded and transcribed, the immigration court failed to do so, meaning we have no record of what exactly transpired at the merits hearing.

37. However, that afternoon, the IJ brought Ms. Batz back into the courtroom for a sort of do-over hearing, at which the IJ attempted to summarize his notes on Ms. Batz's testimony and asked her to agree or disagree with his summarizations. Ms. Batz repeatedly objected that the IJ was omitting or misstating her testimony, and she described the sexual assaults at the hands of the

Guatemalan police. However, the IJ denied her claims for relief, while making no mention of the police's sexual assaults in his decision and also failing to address numerous other issues, including Ms. Batz's claims of fear of persecution based on her indigenous status and mental health.

38. Ms. Batz appealed the IJ's denial of relief to the BIA on May 8, 2025, and on September 19, 2025, the BIA remanded her case to the immigration court for a new hearing. ECF No. 1-2 (BIA Decision).

39. Now Ms. Batz will have to repeat the entire merits process in immigration court, and the case could be appealed again to the BIA. If any appeal at the BIA is not successful, she intends to file a petition for review in the Tenth Circuit. Although the ultimate outcome of her case is uncertain, what is certain is that she stands to be detained for many more months, if not years, before her case is finally resolved.

40. Ms. Batz was initially detained in Montgomery, TX, at a facility with 100 men. The conditions there were poor, and jail officials would insult, curse at, and intimidate those detained there. She requested to be transferred to the Aurora detention facility because she was told she could be housed with other transgender women there, instead of men. *See* Declaration of Cindy Schlosser, ECF No. 1-3 ("Schlosser Decl.") at ¶ 15.

41. Upon her transfer to Aurora, she was initially placed in a unit for transgender women, which at that time had only three people housed in it. Being confined in a room with only two other women, with no meaningful activities, led Ms. Batz to feel increasingly depressed, isolated, and listless. The unit was subject to frequent lockdowns, during which access to basic amenities was restricted and Ms. Batz was confined to her cell. There were also heightened restrictions on recreation; she only had the option to go to recreation for one hour every three or

four days, and the "outdoor recreation" was in a walled, cinder-block enclosure with a caged ceiling. *Id.* at ¶ 16.

42. While housed in the transgender unit, Ms. Batz was sexually harassed by another resident. She called the PREA (Prison Rape Elimination Act) hotline and requested to be placed in protective custody. She was transferred to medical observation for four days and then returned [redacted]. Fearing for her safety, Ms. Batz requested a transfer, but the only option was to be housed with men, which she reluctantly accepted. She was sent to a unit with 16 men, and she describes that unit as "horrible," reporting that [redacted] and she called the PREA hotline again, but her concerns were dismissed. [redacted] physically assaulted her. When she defended herself, she was put in segregation ("the hole") for "engaging" in the incident. *Id.* at ¶ 17.

43. On or about June 28, 2025, Ms. Batz was transferred from Aurora to the Sweetwater County Jail in Wyoming ("Sweetwater"). When she first arrived at Sweetwater, she informed the jail that she was transgender, and they told her the only place they could put her was a small, freezing cell with a filthy, stinking mattress on the floor and a hole in the floor to urinate in. Ms. Batz is a person for whom cleanliness and hygiene are very important, and she found it impossible to relieve herself using the hole in the floor. As a result, she held her urine for several hours, until her bladder hurt severely and she was reduced to tears. When this occurred, a jail employee finally took her to a toilet, and as a result of this experience, Ms. Batz was placed in a cell with male inmates, where at least she had access to bathroom facilities. However, Ms. Batz does not belong

in a cell with male inmates, as she clearly possesses feminine characteristics, including long hair and breast growth from her hormone treatment, putting her at risk of harassment or assault by male inmates. *See generally Griffith v. El Paso County, Colo.*, 129 F.4th 790 (10th Cir. 2025) (holding that transgender woman detained in male facility and denied access to feminine clothing and hygiene products stated claim for relief for violation of the Equal Protection Clause).

44. The unit at Sweetwater smelled strongly of urine and she did not have hygienic products like soap or lotion or clothing items such as bra or underwear because she was told she had to purchase those items and she had no money. She felt constantly naked because she had no undergarments under her jumpsuit. And despite her high cholesterol and need for a special diet, the food consisted mostly of bread and junk food snacks.

45. Sweetwater had no mental health care or psychiatric personnel available to Ms. Batz, and she was informed that if she wished to see a medical doctor for any reason at all, she had to pay for it. Because the deplorable conditions under which she was being held were wholly inappropriate for a transgender individual living with severe mental illness, Ms. Batz's counsel contacted ICE to request her transfer back to Aurora, but ICE never responded.

46. Ms. Batz filed a petition for a writ of habeas corpus in the District of Wyoming, but when the Sweetwater County Attorney offered to have her transferred back to Aurora, where the facility was bad, but not as bad as Sweetwater, she agreed to voluntarily dismiss that petition without prejudice and be transferred. She was transferred back to the Aurora facility on or about August 13, 2025.

47. Ms. Batz had been receiving gender-affirming care at Aurora, including hormone therapy and regular blood work to monitor her organ functioning. However, on September 10,

2025, Cindy Schlosser, Ms. Batz's social worker, learned that ICE and Geo Group, Inc., the owner and operator of the Aurora detention center, had signed an amendment to their contract stating that all transgender care policies and procedures were "hereby fully removed/rescinded from the contract." Terminating an individual's gender-affirming care can lead to increased psychological distress, depression, anxiety, and self-harm, as well as physical symptoms. Schlosser Decl. at ¶ 28.

48. The Aurora facility, where DHS is detaining Ms. Batz, is a for-profit facility operated by GEO Group, Inc. and located in Aurora, Colorado. People detained at the Aurora facility are subjected to punitive conditions akin to penal confinement, including being forced to wear government-issued clothing, having their access to the outdoors and recreation either denied or severely limited, and forbidden from engaging in contact visitation with loved ones. Further, they are "subject to 'daily outbursts of violence and threats.'" *Daley v. Choate*, 22-cv-03043-RM, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023). Indeed, just last month a court in this district heard testimony about the conditions at the Aurora facility and stated that, "The Court has little trouble concluding, based on Maldonado's testimony at the evidentiary hearing, that the conditions at the Aurora Facility strongly resemble penal confinement. More than that, they are abhorrent." *Arostegui-Maldonado v. Baltazar*, --- F. Supp. 3d ---, 2025 WL 2280357, at *7 (D. Colo. Aug. 8, 2025) (Martinez, J.). In that case, Judge Martinez noted that "80 people live together in a 750-square foot space. There is little room for exercise"; "The Facility's air conditioning frequently fails and, when it does, ICE officers refuse to open the doors despite rising temperatures"; and "Access to medical care and mental health services is limited," among other findings. *Id.*

49. Ms. Batz's lengthy detention in these "abhorrent" conditions can be expected to exacerbate her mental health symptoms and continue to worsen her mental health. Her social

worker's declaration details how "researchers and health experts have documented grave and lasting health impacts resulting from prolonged and indefinite detention," including how "already high rates of poor psychological health worsened the longer that asylum seekers were in detention. Most individuals attributed these symptoms largely to their detention, and many also believed their physical health worsened while in detention." Schlosser Decl. at ¶ 30.

50. The Aurora facility exhibits deeply rooted flaws in the care it provides to people within its custody, which places detained persons in danger of harm and death. In 2017, a man named Kamyar Samimi passed away while imprisoned in the Aurora facility. An investigation revealed that his "death resulted from egregious violations of medical standards and that these violations were part of systemic issues at the Aurora facility."[2] Subsequently, in a June 2019 investigation, the DHS Office of Inspector General ("OIG") found the Aurora facility in violation of ICE detention standards.[3] The OIG report revealed that individuals subjected to segregation in Aurora "were not treated with the care required under ICE detention standards" and determined that the absence of outside recreation may reduce the mental health and welfare of people held there. Less than three years ago, on October 13, 2022, a healthy 39-year-old man, Melvin Calero Mendoza, passed away after experiencing a medical emergency while in ICE custody within the Aurora facility.[4] A 2023 investigation in that case found that "the government failed to meet

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[2] Committee on Oversight and Reform and Subcommittee on Civil Rights and Civil Liberties, U.S. House of Representatives Report at 15 (2020), available at: https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf.

[3] Congressional Letter to Inspector General Cuffari and Acting Director Johnson from Rep. Jason Crow, Senator Michael Bennet, and Senator John Hickenlooper (Oct. 21, 2022) available at: https://crow.house.gov/sites/evo-subsites/crow.house.gov/files/evo-media-document/2022.10.21-final-icedhs-letter_0.pdf.

[4] Congressional Letter to Inspector General Cuffari and Acting Director Johnson from Rep. Jason

multiple standards intended to protect detainees' health,"[5] and a wrongful death suit was filed in Mr. Calero Mendoza's death.[6]

LEGAL ANALYSIS

51. "The purpose of habeas corpus is to impose limitations on the Government's ability" to act without a legitimate purpose. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020). The habeas remedy is "adaptable," and its "precise application and scope" depends "upon the circumstances." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008).

52. The INA contained a discretionary, pre-removal detention provision since 1952, and this authority was exercised for decades with a presumption in favor of liberty. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021); *Velasco Lopez*, 978 F.3d at 848; *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976) (A noncitizen "generally is not and should not be detained or required to post bond").

53. Congress amended portions of the INA in 1996 when it passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") but did not "alter the discretionary regime of [detention] except by increasing the minimum bond amount from $500 to $1,500." *Hernandez-Lara*, 10 F.4th at 27-28.

54. In 1999, the BIA abruptly changed course by placing the burden on the noncitizen

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Crow, Senator Michael Bennet, and Senator John Hickenlooper (Oct. 21, 2022) available at: https://crow.house.gov/sites/evo-subsites/crow.house.gov/files/evo-media-document/2022.10.21-final-icedhs-letter_0.pdf.

[5] NPR, "ICE releases investigation into immigrant's death after months of 'inexcusable' delay" (Nov. 8, 2023), available at: https://www.npr.org/2023/11/08/1211316303/ice-releases-investigation-into-immigrants-death-after-months-of-inexcusable-del

[6] *Peralta Rivera v. The Geo Group Inc. et al.*, Case No. 2024CV31540, Adams County (Colorado) District Court (filed Oct. 11, 2024).

to demonstrate that they are neither a flight risk nor a danger to the community. *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999). The BIA has since reaffirmed the holding in *Matter of Adeniji* without discussing its constitutionality.

55. This unexplained rule change is unlawful because, as numerous courts have held, procedural due process requires DHS to carry the burden to prove dangerousness or flight in bond hearings pursuant to § 1226(a). *See, e.g., Velasco Lopez*, 978 F.3d at 855; *Hernandez-Lara*, 10 F.4th at 41; *Oliveira Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025), at *8; *L.G. v. Choate*, 744 F. Supp.3d 1172 (D. Colo. 2024); *J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp.3d 1331 (M.D. Ga. 2020); *Ayobi v. Castro*, 2020 WL 13411861 (W.D. Tex. Feb. 25, 2020); *Kleinauskaite v. Doll*, 2018 WL 6112482 (M.D. Pa. Oct. 19, 2018); *but see Miranda v. Garland*, 34 F.4th 338, 366 (4th Cir. 2022); *Rodriguez-Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022).

I. The Constitution Entitles Ms. Batz to a Bond Hearing at Which DHS Must Demonstrate the Necessity of Continued Incarceration by Clear and Convincing Evidence and with Other Constitutionally Necessary Safeguards.

56. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental protection applies to all persons present in the United States, including both removable and inadmissible noncitizens. *See Clark v. Martinez*, 543 U.S. 371 (2005) (applying *Zadvydas* to inadmissible noncitizens). Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the

[incarcerated] individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal citation omitted).

57. Civil immigration detention is constitutional only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Id.* at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Those limited circumstances include risk of flight and danger to the community. *Id.* at 690-91; *see also Demore*, 538 U.S. at 515, 527-28.

A. The Constitution requires DHS to carry a clear and convincing evidence burden at a bond hearing.

58. The Supreme Court "has consistently held the Government to a standard of proof higher than a preponderance of the evidence where liberty is at stake, and has reaffirmed a clear and convincing evidence standard for various types of civil detention." *Velasco Lopez*, 978 F.3d at 855. The Court has repeatedly recognized the need to limit civil detention, holding that the jailer must bear a high burden of proof to justify the government's interest. *See, e.g., Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (upholding involuntary civil commitment of individuals convicted of sex offenses, but requiring "strict procedural safeguards," including a right to a jury trial and proof beyond a reasonable doubt); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money") (citation and quotation marks omitted); *Foucha*, 504 U.S. at 80-83 (1992); *Addington v. Texas*, 441 U.S. 418, 423 (1979); *U.S. v. Salerno*, 481 U.S. 739, 750-52 (1987). It is immaterial that these precedents are unrelated to immigration detention because "the 'constitutionally protected liberty interest' in avoiding physical confinement, even for [noncitizens] already ordered removed, [is not] conceptually different from the liberty interests of citizens considered in *Jackson*,

Salerno, *Foucha*, and *Hendricks*." *Velasco Lopez*, 978 F.3d at 856 (quoting *Demore*, 538 U.S. at 553 (Souter, J., concurring in part and dissenting in part)).

59. The circuit courts that have meaningfully considered the constitutionality of placing the burden on the noncitizen in § 1226(a) bond hearings have applied the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Rodriguez-Diaz*, 53 F.4th at 1206-07; *Miranda*, 34 F.4th at 359; *Hernandez-Lara*, 10 F.4th at 27; *Velasco Lopez*, 978 F.3d at 851. That test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "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 (3) "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. A proper application of that test demonstrates that the Constitution requires the government to bear a clear and convincing evidence burden in § 1226(a) bond hearings.

60. With regard to the first *Mathews* factor, the private interest at stake here "is the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (emphasis added) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action." *Foucha*, 504 U.S. at 80; *L.G.*, 744 F. Supp. 3d at 1182. Incarceration in the United States is meant to be "the carefully limited exception," *Salerno*, 481 U.S. at 755, and it "constitutes a significant deprivation of liberty that requires due process protection" no matter its purpose. *Jones v. United Stat*es, 463 U.S. 354, 361 (1983).

61. Here, DHS has stripped Ms. Batz of her liberty and jailed her for 440 days and counting, most of this at the Aurora facility. Notably, courts in the District of Colorado have repeatedly found civil detention at the Aurora facility to be akin to punitive imprisonment. *See, e.g., Arostegui-Maldonado*, 2025 WL 2280357, at *7; *Martinez v. Ceja*, 760 F. Supp.3d 1188, 1195 (D. Colo. 2024) (noting the government did not contest allegations that incarceration in the Aurora detention center resembled "penal confinement"); *Daley v. Choate*, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023).

62. Detention's deleterious effect on an incarcerated person's mental health further impacts the individual's private interest. Studies indicate that "detention plays an independent role in contributing to poor mental health outcomes amongst asylum seekers" and suggest that "psychological functioning deteriorates with prolonged detention." *See* M. von Werthern, *et al.*, *The impact of immigration detention on mental health: a systematic review*, 18 BMC Psychiatry 382, 18 (2018) *available at*: https://doi.org/10.1186/s12888-018-1945-y. The individual interest at stake is profound.

63. With respect to Ms. Batz, the private interest factor is compelling. She has now been detained for 440 days and counting. She has been diagnosed with [redacted]. Schlosser Decl. at ¶ 22. A worsening of her mental and physical health is all but inevitable, given the deplorable conditions at the Aurora facility. Schlosser Decl. at ¶¶ 30-32.

64. As to the second *Mathews* factor, the current bond procedures directly cause significant and repeated deprivation of noncitizens' rights. Bond hearings pursuant to § 1226(a) require noncitizens to prove two negatives, even though "[a]s a practical matter it is never easy to

prove a negative." *Elkins v. United States*, 364 U.S. 206, 218 (1960). "[P]roving a negative (especially a lack of danger) can often be more difficult than proving a cause for concern." *Hernandez-Lara*, 10 F.4th at 31; *L.G.*, 744 F. Supp.3d at 1183-84 ("Petitioner argues, and the Court agrees, proving a negative is difficult"). As a result, bond grant rates are astonishingly low. IJs deny on average 69 percent of bond requests, with some denial rates as high as 97 percent. *See* Transactional Records Access Clearinghouse (TRAC), *Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes – Overall Bond Grant Rates Have Dropped* (Jul. 19, 2023) *available at:* trac.syr.edu/reports/722.

65. Moreover, noncitizens have no right to court-appointed counsel in immigration court and overwhelmingly appear pro se. Requiring noncitizens to appear pro se and carry the burden to secure their liberty inherently increases the risk of erroneous results.

66. Detained individuals "have little ability to collect evidence." *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013); *Hernandez-Lara*, 10 F.4th at 30. Jailed noncitizens—many of whom are not fluent in English—are confronted with the often-insurmountable task of collecting evidence without an attorney while incarcerated at a detention facility. The Constitution therefore requires, *inter alia*, additional procedural safeguards to ensure Respondents do not erroneously deprive a detained noncitizen's liberty interest.

67. The risk of erroneous deprivation is reduced when the government is assigned the burden. The government has "substantial resources to employ," including "computerized access to numerous databases and to information collected by DHS, DOJ, and the FBI, as well as information in the hands of state and local authorities." *Velasco Lopez*, 978 F.3d at 853 (citations omitted); *Diaz-Ceja v. McAleenan*, 2019 WL 2774211 (D. Colo. July 2, 2019) at *11. DHS is also

always represented by counsel and is inherently better positioned to know the complexities of immigration law, including filing procedures and IJ preferences. *Hernandez-Lara*, 10 F.4th at 31; *Diaz-Ceja*, 2019 WL 2774211, at *11. The current procedures deprive Ms. Batz of her liberty interest despite significant risk of error, which would be reduced if the government were assigned the burden.

68. As to the third *Mathews* factor, the government's interests are not served by the current § 1226(a) framework, and changing it would cause no undue burden. With respect to the former, the Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690 (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.* at 690-91; *Demore*, 538 U.S. at 515, 527-28. Congress sought to address these legitimate concerns by changing the law to "focus on certain criminal noncitizens, not to alter in any way the then-prevailing burden of proving noncitizens pose a danger or flight risk" for people DHS discretionarily detains. *Hernandez-Lara*, 10 F.4th at 32 (emphasis added).

69. The current § 1226(a) bond process, however, does not address the government's purported interests. *Diaz-Ceja*, 2019 WL 2774211 at *10 ("[T]he current allocation of the burden to the noncitizen does not ensure that detention serves either interest because detention is not premised on such findings"). Under the current procedures, "the Government does not need to show at any point that the noncitizen is a danger to the community or a flight risk," and "[i]nstead, incarceration occurs when a bond is denied absent a showing by the [noncitizen] that she is not dangerous or a flight risk." *Velasco Lopez*, 978 F.3d at 849 (noting that despite holding two bond hearings the agency never found flight risk or dangerousness). Noncitizens must therefore prove

two negatives to rebut the current presumption that detention is necessary, but an IJ is never required to determine that the individual DHS jails is a risk of flight or danger to the community. *See Hernandez-Lara*, 10 F.4th at 33 (shifting the burden and finding that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk" is required to satisfy due process). In sum, Respondents have "no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community." *Velasco Lopez*, 978 F.3d at 857. Detention pursuant to § 1226(a) under the current framework is therefore "at most, a convenience rather than a substantive interest" for Respondents. *Diaz-Ceja*, 2019 WL 2774211, at *10.

70. This third factor also "ultimately entails an assessment of the 'public interest.'" *Hernandez-Lara*, 10 F.4th at 33 (citing *Mathews*, 424 U.S. at 335, 347). "[U]nnecessary detention imposes substantial societal costs." *Id.* That is especially true for § 1226(a) detention because it includes "individuals with no criminal record, those who have known no country other than the United States, those who are or were protected by DACA . . . , international students with visa issues and lawful permanent residents who have lived in this country for decades, among others." *Velasco Lopez*, 978 F.3d at 854; *Diaz-Ceja*, 2019 WL 2774211, at *10. "When the Government incarcerates individuals it cannot show to be a poor bail risk . . . it separates families and removes from the community breadwinners, caregivers, parents, siblings, and employees." *Velasco Lopez*, 978 F.3d. at 855 (emphasis added).

71. Neither ICE nor EOIR will suffer fiscal or administrative hardship if ICE were required to show that Ms. Batz is a risk of flight or danger. The government's resources to obtain information are vast, and "to the extent the Government did not have the necessary information at

its fingertips, it [has] broad regulatory authority to obtain it." *Velasco Lopez*, 978 F.3d at 853 (citing 8 U.S.C. § 1229a(c)(3)); *Diaz-Ceja*, 2019 WL 2774211, at *11.

72. Placing the burden on the government would "limit[ ] the use of detention to only those noncitizens who are dangerous or a flight risk [and] may save the government, and therefore the public, from expending substantial resources on needless detention." *Hernandez-Lara*, 10 F.4th at 33 (citing *Velasco Lopez*, 978 F.3d at 854 n.11); *see Aparicio-Villatoro v. Barr*, 2019 WL 3859013, at *6 (W.D.N.Y. Aug. 16, 2019). It would also reduce the government's administrative burden because IJs would decide dangerousness and flight using ICE's "computerized access to numerous databases," *Velasco Lopez*, 978, F.3d at 853, instead of having to rely on evidence from noncitizens, who are often unable to collect that evidence, *Moncrieffe* 569 U.S. at 201. IJs would also not have to rely on noncitizens' lack of "knowledge with respect to appropriate standard[s] or procedure[s]") during § 1226(a) bond hearings. *Diaz-Ceja*, 2019 WL 2774211, at *11.

73. Here, the government has no interest in jailing Ms. Batz and would not be harmed by carrying the burden of proof. No one has ever demonstrated that Ms. Batz is either a danger or a flight risk; the IJ denied her bond merely because she could not prove she had a relative living in the U.S. with legal status. Requiring DHS to carry the burden of proof would not create significant administrative or financial burdens, as DHS has access to databases that populate information relevant to DHS' concerns of danger to the community or flight risk. It is not in the government's interest to detain a transgender asylum seeker who has no record of dangerousness and who wants nothing more than her day in court to establish her claim to asylum or other relief. These factors weigh in Ms. Batz's favor.

74. Accordingly, Ms. Batz's bond hearing fell short of what is constitutionally required, and the Constitution requires a new bond hearing where DHS must demonstrate that Ms. Batz is a flight risk and a danger to the community by clear and convincing evidence.

B. This Court should follow Judge Rodriguez's decision in *L.G.*, which dealt with these same issues.

75. Although the Tenth Circuit has not ruled on the issue presented by this Petition, this Court should follow the decisions of the First and Second Circuits, as well as the recent decision by a jurist in this district in *L.G. v. Choate*, 744 F. Supp.3d 1172 (D. Colo. 2024), a case legally indistinguishable from this one.

76. In *L.G.*, the court followed the First, Second, Fourth, and Ninth Circuits in applying the *Mathews* balancing test to detention under § 1226(a). 744 F. Supp.3d at 1180. Although the court noted that the Tenth Circuit had not decided this precise question, it also noted that "Tenth Circuit precedent demonstrates that the *Mathews* test is appropriate when determining what process is constitutionally due." *Id.* at 1181.

77. With regard to the first *Mathews* factor, the *L.G.* court held that "the longer the duration of detention, the greater the deprivation of a noncitizen's private interest." *Id.* at 1182. The court cited *Demore* and *Zadvydas*, which involved detention of six months or less and found that prolonged detention that considerably exceeded those periods "enhances [the petitioner's] individual liberty interest, warranting additional procedural safeguards." *Id.* at 1183.

78. With respect to the second *Mathews* factor, the court acknowledged "two of Petitioner's strongest arguments – the difficult task of proving a negative and the resources of the government." *Id.* Citing *Hernandez-Lara* and *Velasco Lopez*, the court found that "as the period of confinement grows, so do the required procedural protections no matter what level of due process

may have been sufficient at the moment of initial detention." *Id.* (internal quotations and ellipsis omitted). Accordingly, the court found that the second *Mathews* favor weighed in the petitioner's favor and that shifting the burden to the government was appropriate.

79. With regard to the third and final *Mathews* factor, the court analyzed the government interest and administrative burden, together with the "public interest," and found that the government's "arguments are not persuasive." *Id.* at 1185. Citing the government's vast resources, the court rejected the government's contention that it would face a fiscal or administrative burden if required to carry the burden at a bond hearing. *Id.*

80. Having found that all three *Mathews* factors weighed in the noncitizen's favor, the *L.G.* court found it appropriate to put the burden on the government to prove by "clear and convincing evidence" that continued detention under § 1226(a) was justified, citing the Supreme Court decisions in *Salerno* and *Addington. Id.* at 1185-86.

C. Assuming, *arguendo*, that Ms. Batz's original bond hearing was constitutionally adequate, she is entitled to a new bond hearing because her detention has become unconstitutionally prolonged.

81. Ms. Batz's detention has become prolonged, and procedural due process requires an individualized bond hearing before a neutral arbiter where the government bears the burden of proof by a clear and convincing evidence standard. Her continued detention without additional procedural protections is not justified. *Velasco Lopez*, 978 F.3d at 854 (finding that individuals subject to prolonged detention under § 1226(a) must be afforded process in addition to that provided by an ordinary bond hearing and providing that process through another bond hearing). ICE detained Ms. Batz 440 days ago, and the length of her continued confinement is indeterminate and could last for many more months or even years.

82. Detention pursuant to "§ 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded." *Id.* at 852. "The longer the duration of incarceration, the greater the deprivation." *Id.* Consequently, "as the period of confinement grows, so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Id.* at 853 (citing *Zadvydas*, 533 U.S. at 701) (internal quotations committed)).

83. Courts in the District of Colorado have considered the constitutionality of prolonged detention of noncitizens in a number of cases and have adopted a six-factor test to consider whether detention is unconstitutionally prolonged under a related detention statute, § 1226(c). Those factors include:

a. the total length of detention to date;

b. the likely duration of future detention;

c. the conditions of confinement

d. delays in removal proceedings caused by the person in immigration custody;

e. delays in removal proceedings caused by the government; and

f. the likelihood that removal proceedings will result in a final order of removal.

See, e.g., de Zarate v. Choate, 2023 WL 2574370 (D. Colo. March 20, 2023). Each of these factors weighs in Ms. Batz's favor.

Length of Detention

84. 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. Ms. Batz's over 14 months of detention are already far beyond what the Supreme Court in *Demore*

considered a reasonable "brief period." *Demore*, 538 U.S. at 529 (upholding detention without bond hearing where the Court said 85% of noncitizens were detained for a median of 30 days, while the remaining 15% were allegedly detained an average of four months).

85. Ms. Batz's 14-plus months of detention strongly weighs in her favor. *See, e.g., Daley v. Choate*, 2023 WL 2336052 (D. Colo. Jan. 6, 2023) (430 day detention weighed strongly in petitioner's favor); *Sheikh v. Choate*, 2022 WL 17075894 (D. Colo. July 27, 2022) at *3 (13 months "weighs strongly in Petitioner's favor"). In fact, courts have found shorter lengths of detention unconstitutionally prolonged. *See, e.g., Galan-Reyes v. Acoff*, 460 F. Supp. 3d 719, 721 (S.D. Ill. 2020) (eight months); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (seven months); *see also Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1217-18 (11th Cir. 2016) (vacated as moot on other grounds by *Sopo v. U.S. Att'y Gen.*, 890 F.3d 952 (11th Cir. 2018)) ("The need for a bond inquiry is likely to arise in the six-month to one-year window").

Likely Duration of Future Detention

86. Similarly, the likely duration of future detention weighs in Ms. Batz's favor. "Courts examine the anticipated duration of all removal proceedings—including administrative and judicial appeals—when estimating how long detention will last." *Villaescusa-Rios v. Choate*, 2021 WL 269766 (D. Colo. Jan. 21, 2021), at *3. Her case has now been remanded to the immigration court for the process to begin anew with a new merits hearing. The losing party at that hearing, whether Ms. Batz or DHS, could again appeal to the BIA, and the case could be further appealed to the Tenth Circuit. Her detention could continue for many months, if not years.

Conditions of Detention

87. The conditions of Ms. Batz's confinement indicate that her prolonged detention is

unconstitutional. The purpose of immigration detention is civil, not punitive. However, merely calling detention "civil" does not make it so when the conditions are not "meaningfully different" from criminal custody. *German Santos v. Warden Pike Cty. Corr. Facility*, 956 F.3d 203, 211 (3d Cir. 2020). Indeed, "whether [Ms. Batz] is detained in a luxurious hotel or a detention facility, or some other building, [s]he is being deprived of [her] liberty – thus, this factor seems somewhat beside the point." *Singh v. Choate*, 2019 WL 3943960 (D. Colo. Aug. 21, 2019), at *6. When conditions of detention resemble a penal institution, this factor weighs in favor of finding that detention is unreasonable. *Id.*

88. Courts have found that conditions in civil immigration detention are not meaningfully different from criminal detention. *Singh*, 2019 WL 3943960, at *6; *see also Velasco Lopez*, 978 F.3d. at 851. Further, because the conditions of confinement determine whether detention is merely "civil" in name only, courts assign greater weight to the conditions of confinement as the length of an individual's detention grows. *German Santos*, 965 F.3d at 211.

89. Here, Ms. Batz has spent most of her detention at the Aurora facility, where conditions are indistinguishable from criminal incarceration. Indeed, jurists in the District of Colorado have repeatedly held that detention at the Aurora facility weighs in a noncitizen's favor because it is akin to a penal institution. *See, e.g., Martinez*, 760 F. Supp.3d at 1195; *Daley*, 2023 WL 2336052 at *4. This factor weighs strongly in Ms. Batz's favor because her ongoing civil detention is in a setting that is as punitive as criminal custody.

Reasons for Delay

90. Any delay caused by an individual's good-faith challenges to removal cannot be held against her. *Villaescusa-Rios*, 2021 WL 269766, at *4; *Singh*, 2019 WL 3943960, at *6; *see*

also Ly v. Hansen, 351 F.3d 263, 272 (6th Cir. 2003) (abrogated on other grounds by *Jennings*, 138 S. Ct. at 830) (noting that "appeals and petitions for relief are to be expected as a natural part of the process. [A noncitizen] who would not normally be subject to indefinite detention cannot be so detained merely because he seeks to explore avenues of relief that the law makes available to him"); *Smith v. Barr*, 444 F. Supp. 3d 1289, 1303 (N.D. Okla. 2020); *Chairez-Castrejon v. Bible*, 188 F. Supp. 3d 1221, 1229 (D. Utah 2016); *German Santos*, 965 F.3d at 211. 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).

91. Further, while a noncitizen is only penalized for delays caused by dilatory tactics, Respondents are responsible for delays regardless of whether they were caused by a lack of diligence. *See Viruel Arias*, 2022 WL 4467245, at *3 (reviewing whether delays in proceedings were caused by a noncitizen's "dilatory tactics" while considering whether the government "engaged in conduct that caused a delay"). Indeed, while "courts must be sensitive to the possibility that dilatory tactics by the removable [noncitizen] may serve" to extend their detention, *Ly*, 351 F.3d at 272, courts need only consider whether "immigration officials have caused delay". *Sajous v. Decker*, 2018 WL 2357266, at *10 (S.D.N.Y. May 23, 2018) (citing *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring)). "Continued detention will also appear more unreasonable when the delay in proceedings was caused by the immigration court or other non-ICE government officials." *Id.* at *11.

92. Here, Ms. Batz's case has been delayed because the immigration court failed to follow the requirements of the INA and its regulations and did not record or transcribe her

immigration hearing, necessitating an appeal to the BIA, and a eventual remand to start the process all over again.

93. Although there is no evidence that the IJ acted in bad faith, the delay in Ms. Batz's continued detention is nevertheless attributable to Respondents. *See, e.g., German Santos*, 965 F.3d at 211 (noting that even without bad faith by the government, "detention … can still grow unreasonable even if the Government handles the removal proceedings reasonably.")

Likelihood that Proceedings Will Result in Removal

94. Finally, Ms. Batz's proceedings are unlikely to result in removal. She is entitled to asylum or withholding of removal if she can establish "she has a well-founded fear of future persecution," which she can show by demonstrating that she "has a fear of persecution in [] her country of nationality … on account of … membership in a particular social group," such as either transgender individuals or indigenous persons. 8 C.F.R. § 208.13(b) (asylum); 8 C.F.R. § 1208.16(b) (withholding of removal).

95. Ms. Batz testified at her immigration court hearing that she had been subject to repeated sexual assaults by Guatemalan police, and that the police committed such assaults with impunity. Courts have held that sexual assault and rape are forms of persecution that will support a claim for asylum or withholding of removal. *See, e.g., Basova v. INS*, 185 F.3d 873 (10th Cir. 1999); *Kaur v. Wilkinson*, 986 F.3d 1216, 1224 n.7 (9th Cir. 2021) ("attempted rape is almost always a form of sexual assault, which we have held constitutes persecution"). Furthermore, rape and sexual assault are forms of torture that would support a grant of relief under the Convention Against Torture. *See, e.g., Xochihua-James v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020) (rape and sexual assault may constitute torture); *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1079 (9th

Cir. 2015) ("Rape can constitute torture … [as it] is a form of aggression constituting an egregious violation of humanity") (citing *Zubeda v. Ashcroft*, 333 F.3d 463, 472 (3d Cir. 2003)). However, because her merits hearing was not recorded by the immigration court, the case will have to be remanded for a new hearing, at the conclusion of which, Ms. Batz expects to be granted some form of relief from removal.

D. Respondents' due process violation—whether because Ms. Batz's original bond proceeding was constitutionally defective or because her detention is now unconstitutionally prolonged—requires a heightened standard of proof on DHS and additional safeguards.

96. As discussed above, the government must carry a clear and convincing evidence burden in any court-ordered bond hearing. Due process, however, requires more than placing that burden on the government.

97. First, 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); 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).

98. Second, DHS cannot meet its burden by relying on antiquated criminal matters that lack bearing on future dangerousness. *See, 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*, 2021 WL 6797494, at *5 (W.D.N.Y. Jan. 5, 2021) (same).

99. Third, due process also requires that an IJ consider an individual's ability to pay a bond and alternative conditions of release when setting a bond. *Salerno*, 481 U.S. at 754 ("bail must be set by a court at a sum designed to [prevent flight] and no more") (citation omitted); *Hernandez v. Sessions*, 872 F.3d 976, 991 & n.4 (9th Cir. 2017) ("a bond determination that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests"); *Juarez v. Choate*, 2024 WL 1012912 (D. Colo. March 8, 2024) at *9 (directing the IJ "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"); *Viruel Arias*, 2022 WL 4467245, at *5.

CLAIM FOR RELIEF

Violation of Ms. Batz's Procedural Due Process Rights Under the Fifth Amendment to the U.S. Constitution (Lack of Constitutionally Adequate Bond Hearing and Unconstitutionally Prolonged Detention)

100. Ms. Batz realleges and incorporates all preceding paragraphs.

101. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. Amend. V.

102. The government detained Ms. Batz without providing her a bond hearing at which the government bears the burden of proof to justify continued detention by clear and convincing

evidence that Ms. Batz is a danger to others or a risk of flight. No neutral adjudicator has ever found a constitutionally adequate reason for DHS to continue incarcerating Ms. Batz.

103. Additionally, and in the alternative, as applied to Ms. Batz, 8 U.S.C. § 1226(a) is unconstitutional because DHS has detained her in ICE custody for a prolonged period, 440 days; her detention will continue indefinitely absent intervention from this Court; the ICE detention facilities in which she has been housed (Aurora and Sweetwater) are akin to a punitive setting; she did not cause significant delay in her immigration proceedings; her ongoing detention will be substantially lengthened as a result of the immigration court's failure to follow applicable law by recording or transcribing her immigration hearing; and Ms. Batz has a bona fide claim against deportation.

104. The government similarly failed to show that no condition or combination of conditions will reasonably assure Ms. Batz's appearance at future court dates and the safety of the community. The government failed to consider alternatives to detention.

105. For these reasons, Ms. Batz's continued detention without a constitutionally adequate bond hearing violates her Fifth Amendment due process rights.

PRAYER FOR RELIEF

WHEREFORE, Ms. Batz prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Ms. Batz outside the jurisdiction of the District of Colorado pending resolution of this case;

(3) Issue a writ of habeas corpus directing Respondents to provide Ms. Batz within seven days of this Court's order a constitutionally adequate bond hearing before an impartial

adjudicator where:

(a) DHS bears the burden of establishing by clear and convincing evidence that continued detention is justified;

(b) The adjudicator must consider Ms. Batz's ability to pay bond, as well as possible alternatives to detention, such as monitoring or periodic ICE check-ins;

(c) The adjudicator must not give undue weight to allegations underlying dismissed criminal charges; and

(d) The adjudicator may not place weight on unauthenticated or antiquated documents;

(4) Award Ms. Batz attorneys' fees and costs under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412, or other applicable law; and

(5) Grant such further relief as the Court deems just and proper.

Dated: September 25, 2025

Respectfully submitted,

/s/ James D. Jenkins
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, James D. Jenkins, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: September 25, 2025

/s/James D. Jenkins

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's CM/ECF system on Sept. 25, 2025, and that a true copy was served pursuant to Fed. R. Civ. P. 4(i) via Certified U.S. Mail, sent Sept. 25, 2025 to the Respondents at the following addresses. A courtesy copy was sent to Kevin Traskos, U.S. Attorney's Office for the District of Colorado, at kevin.traskos@usdoj.gov.

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