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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

A.A.,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.; ROBERT GUADIAN, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Denver Field Office; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAM BONDI, in her official capacity as Attorney General of the United States,

Respondents.

**AMENDED VERIFIED PETITION
FOR A WRIT OF
HABEAS CORPUS**

Case No. 25-3174

INTRODUCTION

1. Petitioner, A.A.,¹ (“Petitioner” or “A.A.”) is a 39-year-old transgender woman who Immigration and Customs Enforcement (“ICE”) detained pursuant to 8 U.S.C. § 1231(a). A.A.

¹ Petitioner is seeking to proceed by pseudonym to protect her identity as she is a transgender woman seeking fear-based protection from Mexico. This amended petition seeks only to correct the case caption and petition to reflect that Petitioner seeks to proceed as “A.A.” A motion to proceed by pseudonym and to file restricted exhibits with identifying information will follow this petition. She uses she/her pronouns and counsel refers to her in this petition accordingly.

has been detained for 32 months in ICE custody without receiving a bond hearing. A.A. petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy her unlawful detention by Respondents at the Aurora Detention Facility (“Aurora”).

2. A.A. faced past persecution and torture in Mexico and fears similar future harm based on being individually targeted in the past as well as due to the overwhelming evidence of widespread, state-sponsored violence perpetrated against transgender women in Mexico. She is actively pursuing relief through withholding of removal and under the Convention Against Torture (“CAT”), which would permanently prevent her deportation. *See* 8 C.F.R. § 1208.18. At the time of this filing, A.A.’s Motion for a Stay of Removal and Petition for Review are pending at the Fourth Circuit Court of Appeals.
3. A.A. suffers from severe mental health diagnoses, the symptoms of which are exacerbated by her lengthy confinement. She continually experiences suicidal ideations, hallucinations, post-traumatic stress disorder and severe depression. ICE’s incarceration of A.A. began years ago and has no end in sight.
4. A.A.’s imprisonment of over 2.5 years is unreasonably prolonged and violates the Due Process Clause of the Fifth Amendment, which prohibits detention without sufficient process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003). A neutral arbiter has never conducted an individualized review of her custody status and without intervention from this Court, she will remain unconstitutionally detained for months or years to come.
5. A.A. petitions this Court to issue a writ of habeas corpus, pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause within three days, providing their reasons, if any, why her detention is lawful, or an injunction, pursuant to this Court’s inherent equitable powers,

requiring her immediate release. She asks this Court to grant her petition and order her immediate release subject to any conditions this Court believes are appropriate and necessary. In the alternative, she respectfully requests that this Court order a custody hearing before the immigration judge (“IJ”) where the burden is on the government to establish, by clear and convincing evidence, that her continued detention is justified and that any risk posed by her release cannot be mitigated by alternatives to detention. *Id.* at § 2241.

JURISDICTION AND VENUE

6. A.A. is detained under 8 U.S.C. § 1231(a). She is in the custody of ICE Enforcement and Removal Operations’ (“ERO”)’s Denver Field Office.
7. This case arises under the United States Constitution. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution (“the Suspension Clause”), 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1331 (federal question jurisdiction).
8. 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. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018); *Demore*, 538 U.S. at 516–17; *Zadvydas*, 533 U.S. at 687.
9. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because A.A. is physically detained in this district and events or omissions giving rise to this action continue to occur in this district.

PARTIES

10. Petitioner A.A. is a 39-year-old transgender woman from Mexico who has been in ICE custody since January 2023 and is currently detained at the Aurora Detention Facility in Aurora, CO. She is seeking withholding of removal and CAT in her immigration case.

11. Respondent JUAN BALTAZAR is the Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc. Respondent Baltazar is responsible for overseeing the administration and management of the Aurora Detention Facility. Though Respondent Baltazar does not have the legal authority to release A.A. without ICE's permission, he is the immediate custodian of the Petitioner. Respondent Baltazar is sued in his official capacity.
12. Respondent ROBERT GUADIAN is the Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Denver Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Colorado, including Aurora Detention Facility, and has the authority to make custody determinations regarding individuals detained there. Respondent Guadian is a legal custodian of the Petitioner. Respondent Guadian is sued in his official capacity.
13. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security. She supervises ICE, an agency within DHS which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Petitioner. Respondent Noem is sued in her official capacity.
14. Respondent PAM BONDI is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office for Immigration Review ("EOIR"), including all IJs and the BIA and has authority over immigration detention. Respondent Bondi is sued in her official capacity.

EXHAUSTION OF REMEDIES

15. Petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. Further, there is no exhaustion requirement because no administrative agency exists to adjudicate a

petitioner's constitutional challenges. *See Matter of C—*, 20 I. & N. Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”).

16. This Court has ruled that “exhaustion is not required in the immigration context when it would be futile...or when ‘the interests of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own authority.’” *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000) and *Gonzalez-Portillo v. U.S. Attorney Gen., Reno*, No. CIV. A. 00-Z-2080, 2000 WL 33191534, at *4 (D. Colo. Dec. 20, 2000)).
17. A.A. has exhausted all possible remedies available to her. She is detained under 8 U.S.C. 1231(a) and thus cannot request a custody redetermination hearing before an IJ. *Johnson v. Aretga-Martinez*, 596 U.S. 573, 578 (2022). There are no further remedies to exhaust.

STATEMENT OF FACTS

Background, Gender Identity, and Immigration History

18. A.A. is a 39-year-old native and citizen of Mexico. Exh. A, Petitioner's Declaration, at ¶ 1. While assigned male at birth, A.A. is a transgender woman and uses female pronouns. *Id.* ¶ 2. A.A. has identified as female since the age of nine although she did not come out publicly as transgender until she was an adult. *Id.* As a child, A.A. spoke in a feminine manner, played with girls, and secretly dressed in women's clothing. *Id.* ¶ 3.
19. A.A. endured bullying from her neighbors and severe physical and emotional abuse inflicted by her stepfather, Baltazar Rios Arista, on account of her perceived sexual orientation. *Id.* Baltazar did not permit A.A. to attend school because of her perceived sexual orientation, and

she is illiterate. *Id.* Baltazar brutally murdered A.A.'s uncle, Alejandro, because he was gay. *Id.* After Baltazar's arrest for this crime, A.A. and her family found themselves homeless and impoverished. *Id.* ¶ 4. At 12 years old, A.A. was sexually abused by a landlord named German Reyes. *Id.* She lived in perpetual fear that he would eventually rape her or evict her family from his land if she told anyone what was happening. *Id.*

20. A.A. became terrified to disclose her sexual orientation or gender identity. *Id.* ¶ 5. She left Mexico and came to the United States in 2002, at age 16. *Id.* ¶ 1. In the United States, A.A. felt liberated to begin expressing her gender identity and sexual orientation. *Id.* ¶ 5.

21. Nevertheless, she decided to return to Mexico in 2005 to reunite with her mother. There, however, A.A. and her friends were targeted by the Mexican police for an alleged crime they had not committed on account of their LGBTQ status. *Id.* ¶ 6. The police assaulted A.A. and beat her head with a gun, and her friends and brother were wrongfully incarcerated for this false accusation and endured years of abuse, violence, and torture. *Id.*

22. After this incident, A.A. fled once again, returning to the United States in approximately 2006 to live with cousins in Tennessee. In June 2007, police arrived at the apartment A.A. shared with her cousins because they detected the scent of marijuana, and she was arrested even though it did not belong to her. *Id.* ¶ 7.

23. Following her release from criminal custody, A.A. was transferred to ICE custody and was subsequently deported in 2008. *Id.* Despite her fear of returning to Mexico due to her sexual orientation and gender identity, as well as the false accusations made by the Mexican police, A.A.—who was illiterate— never had the chance to adequately present her case before the immigration judge because she could not afford to hire a lawyer or pay her bond, and she was

not asked about her fear of return to Mexico or made aware that she could apply for asylum on her own. *Id.*

24. In 2008, A.A. was recognized by people from her hometown leading to strangers “wearing military-type clothing” coming to her workplace in search of her. *Id.* ¶ 8. Fearing for her life, A.A. saw no alternative but to escape Mexico once again and seek refuge in the United States a few months after her deportation. *Id.*

25. A.A. settled in Freehold, New Jersey with her brother. *Id.* In 2009, she began a relationship with another transgender woman, Candy, and this relationship became known to people in Mexico. *Id.*

26. A.A. also had one U.S.-citizen child, C [REDACTED] with her former partner in October 2019. *Id.* ¶ 10. The relationship was abusive, and A.A. ultimately won full custody of her young son. *Id.*

27. In October 2022, A.A. was deported to Mexico again after she was arrested for a false accusation of looking into a neighbor’s window. *Id.* ¶ 11. She found herself homeless, isolated, and afraid; she was robbed at gunpoint. *Id.* She witnessed the Mexican police “hit and beat” other transgender women. *Id.* After staying in Mexico for less than a month, A.A. returned to the United States in November 2022. *Id.*

28. Shortly after her return, in January 2023, ICE detained A.A. due to her prior deportations, and she has remained in ICE custody since that time.

ICE Detention

29. A.A. has been continually detained since January 2023 when she was briefly detained at the Elizabeth Detention Center in Elizabeth, New Jersey before being transferred to MVPC in Phillipsburg, Pennsylvania. MVPC is an ICE detention facility exclusively dedicated to holding noncitizens during their removal proceedings, but which used to be a criminal

penitentiary.² At MVPC, A.A. was confined to a semi-communal “pod” or dormitory with the general male population. *Id.*, ¶ 16.

30. A.A. was detained at MVPC for approximately 8 months. She experienced taunting, harassment, and verbal abuse from other detainees about her clothing and hair due to her presenting as effeminate and being understood to be gay. *Id.*, ¶ 16-18.

31. In approximately August 2023, she was transferred to the Farmville Detention Center in Farmville, VA, where she was detained for approximately 12 months. The conditions that A.A. experienced at Farmville were similar to those at MVPC in that they were also wholly indistinguishable from incarceration in a criminal jail or prison, but the treatment by fellow detainees and Farmville staff proved even more punitive than at MVPC. *Id.*, ¶ 20. At Farmville, A.A. was detained for 22 hours a day in her dormitory, which held over 100 people. *Id.*, ¶ 20. And unlike MVPC, which functions solely as an ICE immigration detention facility, Farmville houses people in immigration detention, as well as people serving jail or prison sentences for criminal convictions.³ The guards and facility staff at Farmville utilize draconian disciplinary procedures or neglect the detainees altogether. *Id.*, ¶ 22. A.A. spent nearly 6 months in solitary confinement at Farmville as a purported form of protection due to her gender identity. This experience exacerbated her mental health diagnoses of anxiety and depression. *Id.* A.A. has been evaluated at length by mental health experts who diagnosed her with “Post-traumatic Stress Disorder with dissociative symptoms and Generalized Anxiety Disorder.” *See*, Exh. B, Mary Watkins, Ph.D., Psychological and Behavioral Health Evaluation (January 25, 2025).

² *See* Casey Tolan, *Biden vowed to close federal private prisons, but prison companies are finding loopholes to keep them open*, CNN (Nov. 12, 2021), available at: <https://www.cnn.com/2021/11/12/politics/biden-private-prisons-immigration-detention-centers-invs/index.html>.

³ <https://nipnl.org/news/press-releases/legal-groups-call-prince-edward-county-void-new-farmville-detention-center>.

32. In August 2024, A.A. was transferred to the Caroline Detention Facility in Bowling Green, Virginia where she was detained for 3 months before being transferred to the Aurora Detention Facility in Aurora, Colorado, in October 2024.

33. A.A. has been detained at Aurora for the last 11 months. There, she was housed in the facility's "trans pod" with other transgender women. The conditions at Aurora are, like the three other detention centers where A.A. has been detained, also carceral.

34. A.A. has inexplicably been designated high security and denied the opportunity to work. *Id.*, ¶ 29-30. She has only one hour of free time per day in the recreation center. *Id.*, ¶ 31. The guards at best ignore her and at worst harass her. *Id.*, ¶ 32. She is unable to communicate with her family due to the exorbitant cost of using the phones at Aurora. *Id.*, ¶ 33. These conditions have left her anxious, depressed and have led to repeated hallucinations, conditions for which she has not received adequate medical care despite her attempts. *Id.*, ¶ 34-35; Exh. B, Psychological and Behavioral Health Evaluation.

35. According to the changes in the National Detention Standards, as of June 18, 2025, the meaningful protections for transgender people in ICE detention are being dismantled, and many women from the "trans pod" have been transferred to general population at other detention centers.⁴ *Id.*, ¶ 27.

Proceedings before EOIR

36. While at MVPC, A.A. was given a Reasonable Fear Interview ("RFI") on February 7, 2023. Following review by an IJ, A.A. was placed in withholding-only proceedings before the

⁴ See <https://www.ice.gov/detain/detention-management/2025> ("National Detention Standards (NDS) 2025 to aligns with Executive Order, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to The Federal Government." Accordingly, references to gender have been replaced with sex throughout the standards."). This change in administrative guidance reflects a substantive rollback of protections, allowing detention centers leeway to deny protections like housing assignments, medical care and privacy accommodations to transgender people.

Cleveland Immigration Court on February 16, 2023. Exh. C, Notice of Intent/Decision to Reinstate Prior Order. On April 17, 2023, the IJ determined that A.A. warranted the imposition of safeguards based on her mental illness and cognitive difficulties, despite finding that she was not incompetent.

37. A.A.'s Individual Hearing was held on June 29, 2023, by an IJ located at the Richmond Immigration Adjudication Center. On August 22, 2023, the IJ issued a written decision denying A.A.'s applications for withholding of removal and CAT. Exh. D-1, IJ Decision.
38. A.A. timely filed an appeal with the Board which was granted on December 22, 2023. Exh. D-2, BIA Decision. The Board ordered the IJ to issue a new decision. On June 17, 2024, the IJ issued a new written decision and once again denied all relief. Exh. D-3, Remanded IJ Decision. A.A. timely appealed.
39. On December 31, 2024, the Board dismissed A.A.'s appeal. Exh. D-4, BIA Decision. A.A. timely filed a Petition for Review with the Fourth Circuit Court of Appeals, which granted her motion for a temporary stay and held her Petition for Review in abeyance on February 10, 2025. Exh. E, Petition for Review.
40. On February 4, 2025, A.A. filed a Motion to Reopen her withholding-only proceedings with the Board requesting the opportunity to have an IJ consider evidence of her deteriorating mental health conditions. On June 5, 2025, the Board issued a decision denying A.A.'s Motion to Reopen. Exh. D-5, BIA Decision. On June 30, 2025, A.A. appealed the denial of her Motion to Reopen to the Fourth Circuit Court of Appeals, which consolidated her Petitions for Review on July 23, 2025.
41. At the time of this filing, A.A.'s Petition for Review and Motion for Stay of Removal remain pending before the Fourth Circuit Court of Appeals.

42. In total, A.A. has been in ICE custody for 2 years and 8 months while her case has proceeded through the immigration court system.

LEGAL FRAMEWORK

I. A.A.'S PROLONGED DETENTION VIOLATES DUE PROCESS.

43. This District has found that “[h]abeas corpus proceedings under [28 U.S.C.] § 2241 “remain available as a forum for statutory and constitutional challenges to post-removal-period detention” effectuated under [8 U.S.C.] § 1231(a)(6).” *Juarez v. Choate*, No. 24-CV-00419, 2024 WL 1012912, at *3 (D. Colo. Mar. 8, 2024) (citing *Singh v. Choate*, No. 23-CV-02069, 2024 WL 309747, at *1 (D. Colo. Jan. 26, 2024) (citation omitted)). The Constitution requires scrutiny of an individual’s detention when it becomes prolonged. *Zadvydas*, 533 U.S. at 701. (“Congress previously doubted the constitutionality of detention for more than six months”); *Demore*, 538 U.S. at 529–30. “[A]s 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 omitted).

44. “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 v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). It ensures that “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Under these due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

45. Due process requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotations omitted). Civil immigration detention is therefore constitutional only in “certain special and ‘narrow’ nonpunitive ‘circumstances.’” *Id.* (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court identified those limited circumstances as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; *see also Demore*, 538 U.S. at 515, 527–28.
46. In *Demore*, the Supreme Court considered the constitutionality of another mandatory detention statute, § 1226(c). 538 U.S. at 513. The Supreme Court ultimately rejected a facial attack to that provision, but it “did so because it understood that the [mandatory] detention would last only for a ‘very limited time.’” *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 208 (3d Cir. 2020) (quoting *Demore*, 538 U.S. at 529 n.12). “Relying on the Government’s representations, the Court explained that detention ‘under § 1226(c) lasts roughly a month and a half in the vast majority of cases’ and ‘about five months in the minority of cases in which the [noncitizen] chooses to appeal.’” *Id.* at 209 (quoting *Demore*, 538 U.S. at 530). Importantly, however, the Court noted that “[s]ince the Due Process Clause prohibits arbitrary deprivations of liberty” a detained noncitizen “could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified.” *Id.* at 532 (Kennedy, J., concurring).
47. In *Arteaga-Martinez*, the Supreme Court considered the mandatory detention scheme in § 1231(a), but expressly declined to address the constitutional due process question, instead leaving the due process analysis “for the lower courts to consider in the first instance.”

Johnson v. Arteaga-Martinez, 596 U.S. 573, 583 (2022). Similarly, in *Demore*, the Court noted that “as-applied constitutional challenges remain available to address ‘exceptional’ cases” for individuals subject to mandatory detention. *Id.* at 583. This District has found that “[h]abeas corpus proceedings under § 2241 “remain available as a forum for statutory and constitutional challenges to post-removal-period detention” effectuated under § 1231(a)(6).” *Juarez*, 2024 WL 1012912, at *3 (D. Colo. Mar. 8, 2024) (citing *Singh v. Choate*, No. 23-CV-02069, 2024 WL 309747, at *1 (D. Colo. Jan. 26, 2024) (citation omitted)).

48. Once mandatory detention becomes unreasonably prolonged, due process requires a bond hearing. *German Santos*, 965 F.3d at 209; *Michelin v. Oddo*, No. 23-CV-22, 2023 WL 5044929, at *7 (W.D. Pa. Aug. 8, 2023), *reconsideration denied in part*, No. 23-CV-22, 2023 WL 5672278 (W.D. Pa. Sept. 1, 2023) (applying the framework articulated in *German Santos*, finding that “continued detention [under § 1231(a)] without a bond hearing violates [petitioner’s] rights under the Due Process Clause”). These decisions are consistent with the maxim that the “Due Process Clause foresees eligibility for bail as part of due process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotations and citations omitted).

49. Courts in this District apply a six-factor test when analyzing whether a noncitizen’s mandatory detention has become unconstitutionally prolonged, violating due process. This is true both in the pre-removal order and post-removal order context. *Juarez*, 2024 WL 1012912, at *3 (applying the test established for due process violations under pre-removal detention to post-removal detention). There is “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.* (citing *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 222 (3d Cir. 2018), *abrogated on other grounds by Arteaga-Martinez*, 596 U.S. 573 (2022) (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1087 (9th Cir. 2011))).

50. The *Singh* factors include:

- (1) the total length of detention to date;
- (2) the likely duration of future detention;
- (3) the conditions of detention;
- (4) delays in the removal proceedings caused by the noncitizen;
- (5) delays in the removal proceedings caused by the government; and
- (6) the likelihood that the removal proceedings will result in a final order of removal.

Singh v. Choate, No. 19-CV-00909, 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019).

51. Once detention is prolonged, a neutral adjudicator is required to remedy the due process violation. *Juarez*, 2024 WL 1012912, at *5 (“it is, at best, doubtful whether ICE’s periodic custody reviews satisfy the Fifth Amendment’s due process demands.”) (citation omitted); *Viruel Arias v. Choate*, No. 22-CV-02238, 2022 WL 4467245, at *3 (D. Colo. Sept. 26, 2022) (finding that petitioner’s “continued detention requires an individualized bond hearing before an IJ to ‘comport with due process’”) (citation omitted).

52. Each of the six factors weigh in A.A.’s favor.

Duration of Detention & Likelihood of Continued Detention

53. The first and “most important factor” courts consider in as-applied challenges to continued mandatory detention is the duration of detention. *See German Santos*, 965 F.3d at 211. The Supreme Court has suggested that detention becomes unreasonably prolonged when it exceeds six months. *See Demore*, 538 U.S. at 529–30; *Zadvydas*, 533 U.S. at 701. A.A.’s 2

year and 8-month detention is over five times longer than the six-month period recognized in *Zadvydas*. *Id.* This factor strongly weighs in her favor. *Daley v. Choate*, No. 22-CV-03043-RM, 2023 WL 2336052, at *3 (D. Colo. Jan. 6, 2023) (detention of 14 months prolonged); *Viruel Arias*, 2022 WL 4467245, at *2 (14 months); *Sheikh v. Choate*, No. 22-cv-1627-RMR, 2022 WL 17075894, at *3 (D. Colo. Sep. 26, 2022) (13 months); *Villaescusa-Rios v. Choate*, No. 20-cv-03187-CMA, 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021) (collecting cases); *see also Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1217–18 (11th Cir. 2016) (“The need for a bond inquiry is likely to arise in the six-month to one-year window”).

54. The second factor, the likely duration of future detention, also weighs in A.A.’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*, 2021 WL 269766, at *3; *see also Smith v. Barr*, 444 F. Supp. 3d 1289, 1302 (N.D. Okla. 2020) (“[T]he fact that [petitioner’s] detention may last well over a year while he exhausts his appellate rights demonstrates that his detention is likely to be further prolonged, and thus less constitutionally reasonable.”). A.A.’s PFR remains pending at the Fourth Circuit Court of Appeals. Further, A.A. has appealed the denial of her Motion to Reopen with the Board, a process that will take many months for resolution. While A.A.’s “detention will definitely terminate at some point, [] that point is likely to be many months or even years from now.” *See Villaescusa-Rios*, 2021 WL 269766, at *3 (quoting *Singh*, 2019 WL 3943960, at *6).

55. A.A.’s 2 years and 8-month long detention is already prolonged and will continue for months or years absent this Court’s intervention. Accordingly, this factor weighs strongly in her favor. *Daley*, 2023 WL 2336052, at *3; *Sheikh*, 2022 WL 17075894, at *3.

Conditions of Detention

56. As the conditions of civil detention at the Aurora Detention Facility are akin to criminal detention and penal confinement, this factor also weighs in favor of A.A.. When conditions of detention resemble a penal institution, this factor weighs in favor of finding that detention is unreasonable. Courts afford greater weight to this factor as the length of an individual's detention grows. *German Santos*, 965 F.3d at 211.
57. “[T]he Aurora facility has a history of violating medical standards, resulting in the deaths of some [detained people], as well as violating ICE’s own detention standards.” *Daley*, 2023 WL 2336052, at *4. People detained there are “denied outside recreation, are required to wear government issued clothing, are deprived of contact visitation with their loved ones, and are subject to ‘daily outbursts of violence and threats.’” *Id.* Respondents previously conceded that courts have found that the Aurora facility “is enough like a corrections facility for this factor to favor” petitioners. *de Zarate v. Choate*, No. 23-CV-00571, 2023 WL 2574370, at *4 (D. Colo. Mar. 20, 2023) (citing *Daley*, 2023 WL 2336052, at *4).
58. Conditions at the Aurora facility are not meaningfully different from criminal detention. Aurora is operated by the GEO Group, a private prison company that also operates many facilities that incarcerate people serving criminal sentences. *See Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (finding that this factor favored petitioner detained in private, for profit carceral facility “operated by CoreCivic, Inc., which also runs many state penitentiaries”). Complaints detail oppressive and unsafe conditions, including substandard medical and mental health care, racial discrimination, medical neglect, failure to comply with agency standards, reports of excessive use of force, disability discrimination, retaliation against First Amendment-protected speech, and claims related to wage violations and forced

labor.⁵ Three people detained at Aurora have died since 2012, most recently Melvin Ariel Calero-Mendoza in 2022. The conditions at Aurora have led Congresspeople representing the district in which it sits to sue the DHS for unlawfully denying them access to the facility to perform oversight functions.⁶ When someone is detained in the Aurora facility, this factor weighs in their favor. *de Zarate*, 2023 WL 2574370, at *4.

59. The conditions of confinement are particularly egregious for A.A., who suffers from multiple mental health conditions and reports lack of access to adequate medical care, exacerbating both her physical and mental health diagnoses significantly and resulting in insomnia and hallucinations. *See* Exh. A, Petitioner's Declaration; Exh. B, Psychological Behavioral Health Evaluation.

60. A.A.'s civil detention is in a setting that is in effect as punitive as criminal custody. Therefore, this factor strongly weighs in favor of her release.

Reasons for Delay

61. Delays caused by an individual's good-faith challenges to removal cannot be held against them. *de Zarate*, 2023 WL 2574370, at *4 ("[T]he Court will not hold her efforts to seek relief through the available legal channels against [a noncitizen]."); *Villaescusa-Rios*, 2021 WL 269766, at *4; *Singh*, 2019 WL 3943960, at *6. Under this factor, courts ask whether the

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

⁶ Congressman Crow Sues Trump Administration for Denying Access to Aurora's ICE Detention Facility, <https://crow.house.gov/media/press-releases/congressman-crow-sues-trump-administration-for-denying-access-to-aurora-s-ice-detention-facility>

reasons for delays are due to “careless or bad-faith errors in the proceedings.” *German Santos*, 965 F.3d at 211 (internal quotations omitted); *Sheikh*, 2022 WL 170758944, at * 3; *Villaescusa-Rios*, 2021 WL 269766, at * 3. Short continuances and minor extensions to briefing deadlines have been found to demonstrate “good-faith efforts to obtain counsel and to allow counsel adequate time to prepare [petitioner’s] merits briefing before the IJ,” and not dilatory tactics. *Juarez*, 2024 WL 1012912, at *7.

62. Respondents are responsible for delays regardless of whether they were caused by a lack of diligence. *See id.* (finding in favor of petitioner where respondents acknowledged that the government caused “various delays”). Respondents need not act in bad faith for any delays they caused to weigh in A.A.’s favor. *Lopez Santos v. Clescери*, No. 20-CV-50349, 2021 WL 663180, at *6 (N.D. Ill. 19, 2021), *appeal dismissed sub nom. Santos v. Clescери*, No. 21- 1697, 2021 WL 8154943 (7th Cir. June 30, 2021) (finding that while the government did not act in bad faith, the “delay factor considers which party caused the delay” and the party that caused the delay was the government); *Martinez v. Clark*, No. 18-CV1669, 2019 WL 5968089, at *10 (W.D. Wash. May 23, 2019), *report and recommendation adopted*, No. 18- CV-01669, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (“Although not the result of intentional action on behalf of government officials, this delay is attributable to the Government.”); *Chairez-Castrejon v. Bible*, 188 F. Supp. 3d 1221, 1229 (D. Utah 2016).
63. “Continued detention will also appear more unreasonable when the delay in proceedings was caused by the immigration court or other non-ICE government officials.” *Sajous v. Decker*, No. 18-CV-2447, 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018) (citing *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring)). When delay is due to long continuances caused by immigration court docket crowding, this factor runs against the government. *Djelassi v. ICE*

Field Off. Dir., 434 F. Supp. 3d 917, 931 (W.D. Wash. 2020) (holding that “crowded dockets” constitute delay attributable to the government). “[T]he operative question should be whether the [noncitizen] has been the cause of the delayed immigration proceeding and, where the fault is attributable to some entity other than the [noncitizen], the factor will weigh in favor of concluding that continued detention without a bond hearing is unreasonable.” *Sajous*, 2018 WL 2357266, at *11.

64. A.A. pursued her rights diligently and has not delayed her proceedings. She has not acted in bad faith in requesting minor extensions during the pendency of these proceedings, and there is no demonstration of improper dilatory tactics. *See Villaescusa-Rios*, 2021 WL 269766, at *4 (citing *Singh*, 2019 WL 3943960, at *6). A.A.’s good faith belief in the merits of her claim and in her eligibility for immigration relief is reflected in her commitment to pursuing legal relief despite the appalling conditions and mental strain of remaining in ICE detention at Aurora. Because A.A. has not engaged in dilatory tactics, and because individuals like A.A. should not be penalized for seeking legitimate relief, this factor weighs in favor of A.A..
65. A.A.’s ongoing proceedings have been delayed at various junctures. First, A.A. was detained for six months before her individual merits hearing was conducted with the immigration court on June 29, 2023. Both DHS and A.A. requested brief two-week extensions to file supplemental evidence which were granted. She was then transferred to Farmville where she received the written decision in her immigration case on August 22, 2023, which she appealed to the Board.
66. A.A. requested and was granted a 21-day briefing extension request to address the several complex legal issues on appeal. On December 22, 2023, her appeal was granted, but she had to wait another six months for a corrected written decision, which once again denied her relief

on June 17, 2024, in a 63-page decision. A.A. appealed and requested a 21-day briefing extension request to submit briefing on the second denial as it required extensive legal analysis, which was granted by the Board on August 28, 2024. Soon after, A.A.'s previous counsel departed her position at the American Friends Service Committee, requiring a new attorney to get up to speed her A.A.'s complex case in order to file the requisite briefing to the Board. The Board granted another short 21-day extension request.

67. A.A. was again transferred to Caroline and then across the country to Aurora. At Aurora, A.A.'s appeal at the Board was denied, and she filed a Petition for Review and Stay Motion with the Fourth Circuit Court of Appeals in January 2025 and a Motion to Reopen her proceedings on February 4, 2025, due to her serious deteriorating medical conditions. Her case was held in abeyance pending a decision on her Motion to Reopen at the Board. Her Motion to Reopen was denied and she filed an additional Petition for Review with regard to that decision. Her Petitions for Review were consolidated on July 23, 2025, and they remain pending before the Fourth Circuit Court of Appeals.

68. In all, A.A. requested briefing extensions for a total of approximately 11 weeks over the course of her two years and eight months' detention. Subtracted from the entire length of her detention, A.A.'s detention still far exceeds a prolonged period.

69. Further, A.A.'s success in overturning the IJ's unfavorable decision on her application for relief from removal indicates that the continuances she sought were in good faith and not dilatory tactics. *See Villaescusa-Rios*, 2021 WL 269766, at *4 (citing *Singh*, 2019 WL 3943960, at *6) (Petitioner's actions to overturn an erroneous IJ decision were not dilatory tactics). The extension requests she filed were not the fault of A.A. and are a result of her diligently exercising her rights.

70. The Board's remand to the IJ due to the reversible errors in the IJ's analysis of her protection claims caused further significant delays that are attributable to the government, not A.A.. *See Singh*, 2019 WL 3943960, at *6 ("In fact, a portion of the delay in this case can be attributed to the BIA granting Petitioner's motion to remand...")

71. Therefore, this factor weighs in favor of A.A. or is, at a minimum, neutral.

Likelihood that Proceedings Will Result in Removal

72. Finally, A.A.'s proceedings are not likely to result in removal. A.A. faces significant risk of persecution and torture in Mexico. She has already experienced targeted physical, emotional and sexual violence in the past. She is seeking protection because she experienced persecution and torture on account of her gender identity, gender expression and sexual orientation and is likely to be targeted again if returned to Mexico. She qualifies for protection on that basis. *See* 8 C.F.R. § 1208.13(b)(1).

73. Objective evidence strongly supports A.A.'s applications for withholding of removal and CAT protection, and her claims are further bolstered by favorable caselaw in the Fourth Circuit where her case is pending. The IJ already found that A.A.'s risk of harm "is somewhat elevated in comparison with other transgender women" due to her being targeted by the Mexican authorities in the past and found that she has suffered harm rising to the level of torture while previously living in Mexico. *See* Exh. C, IJ Decision.

74. Further, A.A. submitted substantial country conditions evidence demonstrating widespread, systemic, state-sponsored violence against transgender women in Mexico. In *Molina Mendoza*, the Fourth Circuit vacated the IJ's decision because "[t]he record contained evidence that significantly undermined the Immigration Judge's finding that LGBTQ individuals in Mexico do not face a pattern or practice of harm." 712 F. App'x 240, 245 (4th Cir. 2018). This includes

the hundreds of documented homicides of transgender Mexicans in recent years, including 62 documented murders in 2022 alone, demonstrating that there is a pattern or practice of targeted harm against transgender women in Mexico. She submitted significant evidence that this persecution is pervasive, including an expert report which showed “rampant impunity” of violence against transgender people and stated that Mexico is the deadliest country in Latin America for transgender people.

75. Further, A.A. previously established that there is a reasonable possibility that she would be persecuted on the basis on a protected ground or be tortured in Mexico, suggesting that her withholding of removal and CAT case is colorable, *Juarez*, No. 1:24-CV-00419-CNS, 2024 WL 1012912, at *7 (D. Colo. Mar. 8, 2024).

76. Once eligibility is established, both withholding of removal and CAT protection are mandatory. 8 C.F.R. § 1208.16(c)(4). A.A. has a compelling claim, which, if granted, would prohibit DHS from removing her to Mexico.

77. In conclusion, each of the factors weighs in favor of finding that A.A.’s prolonged detention without a bond hearing is unconstitutional.

II. THE COURT SHOULD ORDER A.A.’S RELEASE, OR IN THE ALTERNATIVE, ORDER A CUSTODY HEARING WHERE THE GOVERNMENT BEARS THE BURDEN OF JUSTIFYING A.A.’S DETENTION.

78. A.A.’s 32-month prolonged detention violates due process, and the appropriate remedy is release. *See Malam v. Adducci*, 452 F. Supp. 3d 643, 661 (E.D. Mich. 2020), *as amended* (Apr. 6, 2020) (citing *Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15–16 (1971) (“Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”)). Immediate release is contemplated when immigration detention

becomes unlawful. *Zadvydas*, 533 U.S. at 701; *Mapp v. Reno*, 241 F.3d 221, 229 (2d Cir. 2001) (recognizing the court’s inherent power to order release of habeas petitioners from immigration detention); *Smith v. Bounds*, 813 F.2d 1299, 1301 (4th Cir. 1987) (“A district court enjoys wide discretionary authority in formulating remedies for constitutional violations.”).

79. In the alternative and at a minimum, due process requires an individualized custody hearing with adequate procedural safeguards to protect against the unconstitutional deprivation of A.A.’s liberty. *See Juarez*, 2024 WL 1012912, at *8 (“continued detention requires an individualized bond hearing before an IJ in order to comport with due process.”); *Daley*, 2023 WL 2336052, at *5; *Viruel Arias*, 2022 WL 4467245, at *3.
80. At that custody hearing, the government must justify A.A.’s ongoing detention by clear and convincing evidence because “placing the burden of proof on the government comports with due process requirements.” *Juarez*, 2024 WL 1012912, at *8 (citation omitted). When the government seeks to deprive someone of liberty, it bears the burden of proving that such deprivation is justified. Because “civil commitment for any purpose constitutes a significant deprivation of liberty,” *Addington v. Texas*, 441 U.S. 418, 425 (1979), A.A.’s ongoing detention constitutes a serious deprivation. *See Foucha v. Louisiana*, 504 U.S. 71, 75–76 (1992).
81. “[T]he overwhelming majority of courts” have “held that the government must bear the burden by clear and convincing evidence” when there is a due process violation stemming from prolonged detention. *Pedro O. v. Garland*, 543 F. Supp. 3d 733, 742 (D. Minn. June 14, 2021) (citing *German Santos*, 965 F.3d at 213–14) (explaining that the government bears the burden of proof by clear and convincing evidence because the noncitizen’s “potential loss of liberty is

so severe” in the § 1226 context and observing that a noncitizen’s detention “is likely to be longer under § 1231(a)(6) than under § 1226(c),” and that “detention after a removal order has no built-in end date”). Courts in this District agree. *Juarez*, 2024 WL 1012912, at *8; *Daley*, 2023 WL 2336052, at *5; *Viruel Arias*, 2022 WL 4467245, at *3; *Sheikh*, 2022 WL 17075894, at *4; *Villaescusa-Rios*, 2021 WL 269766, at *5; *Singh*, 2019 WL 3943960, at *7.

82. Due process also requires consideration of alternatives to detention before finding continued detention is justified. The primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 690. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).
83. Finally, due process prohibits the government from “imprisoning a defendant solely because of his lack of financial resources.” *Bearden v. Georgia*, 461 U.S. 660, 661 (1983); *see also Turner v. Rogers*, 564 U.S. 431, 447–48 (2011) (holding that due process requires specific findings as to an individual’s “ability to pay” before incarcerating him for civil contempt). Accordingly, due process requires consideration of a noncitizen’s ability to pay a bond *and* alternative release conditions. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (concluding that due process likely requires “consideration of the [noncitizen’s] financial circumstances, as well as of possible alternative release conditions . . . to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring their appearance at future hearings”); *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978).
84. Here, A.A. merits an individualized bond hearing before a neutral adjudicator where the burden of proof lies on the government, and the standard of proof is clear and convincing

evidence to continue detention. The IJ must consider A.A.'s ability to pay and consider alternatives to detention.

CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

47. A.A. realleges and incorporates by reference the paragraphs above.

48. 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.

49. Civil immigration detention violates due process if its continuation is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 513.

50. A.A. has been detained for over 32 months without a bond hearing, and her detention will very likely span many more months while her Petition for Review remains pending with the Fourth Circuit Court of Appeals. This detention, particularly when considered in the light of A.A.'s medical and mental health concerns, is no longer related to the statutory purpose of ensuring her appearance for removal proceedings or preventing danger to the community and therefore has become unreasonable under this Court's *Singh* factors.

51. To remedy A.A.'s prolonged detention, due process requires her immediate release or, at a minimum, that the Government be obligated to establish at an individualized bond hearing before an IJ that A.A.'s detention is justified by clear and convincing evidence, taking into consideration her ability to pay and whether conditions of release might mitigate risk of flight.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Declare that Petitioner's prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;

- b. Enjoin Respondents from transferring Petitioner outside of the jurisdiction of the District of Colorado pending the resolution of this case and if she has been transferred, order ICE to return her to the jurisdiction of the District of Colorado;
- c. Issue a writ of habeas corpus and order Respondents to immediately release Petitioner from their custody; or,
- d. Alternatively, issue a writ of habeas corpus ordering Respondents to schedule an individualized bond hearing within 14 days before an IJ with the burden of proof on the Government to establish by clear and convincing evidence that Petitioner poses a current flight risk or danger to the community, and ordering the IJ to consider alternatives to detention and Petitioner's ability to pay a bond; and
- e. Grant any other further relief this Court deems just and proper.

Dated: October 8, 2025

Respectfully submitted,

s/ Alex Mintz

Alex Mintz, Esq.

American Friends Service Committee

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VERIFICATION

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

Dated: October 8, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alex Mintz, hereby certify that on October 8 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Alex Mintz, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on October 9, 2025.

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