IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

A.T. *Petitioner-Plaintiff,* *v.* **JUAN BALTAZAR**, in his official capacity as Warden of the Aurora Contract Detention Facility; **GEORGE VALDEZ**, in his official capacity as Acting Field Office Director, Denver, U.S. Immigration and Customs Enforcement; **MARKWAYNE MULLEN**, in his official capacity as Acting U.S. Secretary of Department of Homeland Security; **TODD LYONS**, in his official capacity as Director of Immigration and Customs Enforcement; **PAMELA BONDI**, in her official capacity as Attorney General of the United States, *Respondents-Defendants.*	**Case No. 1:26-cv-00925** **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Ms. A.T.[1] is a 34-year-old Honduran mother who survived five years of sexual, physical, and emotional abuse by a powerful arms dealer after she was trafficked by her own family. In 2019, her sister helped Ms. A.T. and her young daughter escape to the United States – only to labor traffic her and continue her physical and emotional abuse. Ms. A.T. has been detained by Immigration and Customs Enforcement ("ICE") for almost 24 months and her prolonged detention merits immediate release.

2. The Department of Homeland Security ("DHS") has detained Ms. A.T. since approximately March 14, 2024. Absent this Court's intervention, there is no end in sight for Ms. A.T.'s detention. Her detention is certain to continue for months, if not years, while the Board of Immigration Appeals ("BIA") considers her appeal and while she awaits U.S. Citizenship and Immigration Services' ("USCIS") adjudication of her T-visa, for which she received a Bona Fide Determination ("BFD") that afforded her deferred action and a stay of removal. As a result, DHS cannot remove Ms. A.T. from the United States.

3. Ms. A.T.'s continued detention despite her BFD and deferred action status violates the Administrative Procedure Act ("APA") because it is arbitrary and capricious given it contradicts USCIS's decision that found she presented bona fide evidence that she is a survivor of human trafficking, and in turn, granted her protection *against removal*.

4. Ms. A.T.'s prolonged detention violates the Due Process Clause of the Fifth Amendment.

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[1] Due to profound concerns for Ms. A.T.'s safety if her identity is publicly shared, this petition is accompanied by a Motion to Proceed Under Pseudonym.

5. Ms. A.T. seeks a writ of habeas corpus ordering her immediate release or, in the alternative, a bond hearing before a neutral adjudicator at which DHS bears the burden of justifying her continued detention by clear and convincing evidence and where the adjudicator, *inter alia*, considers her ability to pay any bond amount and alternatives to detention.

PARTIES

6. Petitioner Ms. A.T. is a Honduran survivor of sex-and labor-trafficking. She arrived in the United States in 2019, and DHS detained her on or around March 14, 2024. She remains under the direct custody of Respondents and their agents. Ms. A.T. is currently detained by Respondents at the Aurora facility located at 3130 N. Oakland Street, Aurora, CO 80010. Ms. A.T. is detained pursuant to 8 U.S.C. § 1226. Respondents have never provided an individualized bond hearing to determine whether her continued detention is justified.

7. Respondent Juan Baltazar is named in his official capacity as the warden of the Aurora facility, where Ms. A.T. is detained, and is therefore her legal custodian.

8. Respondent George Valdez is named in his official capacity as the Acting ICE Denver Field Office Director. The Denver Field Office is responsible for carrying out ICE's immigration detention operations at all of Colorado's detention centers. Respondent Valdez is a legal custodian of Ms. A.T.

9. Respondent Markwayne Mullen, Acting is named in his official capacity as Acting Secretary of DHS. He is responsible for the administration of U.S. immigration law, supervises Respondent Valdez, and is legally responsible for the process of Ms. A.T.'s detention and removal. As such, he is a legal custodian of Ms. A.T.

10. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Ms. A.T. As such, he is the legal custodian of Ms. A.T.

11. Respondent Pamela Bondi is named in her official capacity as General of the United the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of Colorado and is legally responsible for administering Ms. A.T.'s removal and bond proceedings as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Ms. A.T.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to U.S. Const. Art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act). This case arises under the Constitution and laws of the United States, including the Due Process Clause, U.S. Const. Amend. V; the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*; the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, and 28 U.S.C. § 2241 *et seq.* (habeas corpus).

13. 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, 65; as well based on its inherent authority to grant equitable relief. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

14. Venue is proper under 28 U.S.C. §§ 1391(b)(2) and (e) because at least one of the Respondents is a resident of this District, and a substantial part of the events giving rise to the

claims in this action took place within this District. 28 U.S.C. § 1391. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973).

STATEMENT OF FACTS

15. Ms. A.T. is a 34-year-old Honduran mother of three who was raised in a poor and abusive family. Exh J, Forensic Competency Evaluations by Dr. Bryan Rojas-Araúz, ("Exh. J.) at 59. She was forced to leave school after sixth grade and worked the fields for her parents. *Id.* At seventeen, Ms. A.T. met her daughter's father. A few days after Ms. A.T. gave birth, he was murdered. *Id.*

16. In 2014, Ms. A.T. was sold by her parents to an arms dealer. *Id.* For the next five years, Ms. A.T. lived locked in a house on his ranch, separated from her daughter. She was raped, physically abused, and threatened with murder on a daily basis. *Id.* During this time, she gave birth to her second child, a boy.

17. Finally, Ms. A.T.'s sisters conspired to help her and her daughter escape—though she was forced to leave behind her young son. *Id.* Ms. A.T. fled across the border in 2019, to her sister's house in New Jersey. *Id.* at 61.

18. Ms. A.T.'s sister immediately forced Ms. A.T. to work in a factory and confiscated all her paychecks. *Id.* For two and a half years, Ms. A.T. worked without pay and forcibly performed all of the labor in her sister's house. Her sister threatened her with deportation to maintain control over her and would not allow A.T. to leave the house unaccompanied. *Id.*

19. In January 2022, Ms. A.T.'s sister threw Ms. A.T. and her daughter out on the street. *Id.* A friend found an apartment for her and shortly thereafter, she began a relationship with a man from her work. *Id.* at 63. However, in July 2022, police arrested Ms. A.T.'s partner for sexually

abusing her daughter. *Id.* Custody of Ms. A.T.'s daughter was given to her sister, and Ms. A.T. was eventually imprisoned on charges of child neglect stemming from her partner's abuse of her daughter. *Id.* at 64. When she entered jail, Ms. A.T. had to give up custody of her five-month-old son and has not seen him since. Exh. A, Declaration of Ms. A.T., ("Exh. A") at ¶ 7. The custody arrangement was initially temporary but has now lasted years because of the length of Ms. A.T.'s detention in ICE custody.

20. After six months in jail, Ms. A.T. signed a plea deal, believing this would allow her to reunite with her children. She was sentenced to four years of parole with no jail time. Exh. H, Criminal Records Chart ("Exh. H") at 44. However, the day she left jail, she was taken by ICE and incarcerated at the Aurora facility in Colorado. Exhibit B, Notice to Appear ("Exh. B") at 9.

Ms. A.T.'s T Visa and Removal Proceedings

21. ICE took Ms. A.T. into its custody on March 14, 2024,[2] and served her with a Notice to Appear, the document initiating her removal proceedings, charging her as inadmissible pursuant to 8 U.S.C. 1182(a)(6)(A)(i). *Id.*

22. Ms. A.T. initially appeared *pro se* before the Aurora Immigration Court, in April 2024, at which time the Immigration Judge ("IJ") found her incompetent to represent herself and ordered appointment of a Qualified Representative ("QR") pursuant to the National Qualified Representative Program ("NQRP"). Exh. D, Order to Appoint a Qualified Representative, ("Exh. D") at 17.

[2] However, Ms. A.T.'s Notice of Custody Determination from ICE is dated September 11, 2023, during which time she was imprisoned in New Jersey. Exh. B at 11. She has thus arguably been in ICE's custody since this time, which puts her total length of detention at 908 days. But, at a minimum, ICE has detained her for 723 days as of the date of this filing.

23. With the assistance of counsel, Ms. A.T. submitted an I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). On December 23, 2024, she submitted a discretionary parole request to DHS, which was denied with a terse, generic denial untethered from the facts and circumstances specific to Ms. A.T.'s situation. Exh. G, Release Requests, ("Exh. G") at 39.

24. Ms. A.T. also submitted an application for a T-visa to U.S. Citizenship and Immigration Services ("USCIS") based on her experience of being subjected to labor trafficking in the United States. Exh. C, T Visa Bona Fide Determination ("Exh. C") at 14-15. Ms. A.T. received her Bona Fide Determination from USCIS on December 19, 2024, which grants her a stay of removal while USCIS adjudicates her T visa. *Id.* In sum, based on the agency's own determination, it is unlawful for DHS to remove Ms. A.T. from the United States.

25. At her removal hearing on September 8, 2025, the Immigration Judge denied Ms. A.T.'s claims for asylum and for protection under the CAT.

26. Ms. A.T. timely appealed the decision to the BIA on September 18, 2025. Exh. F, BIA Appeals Documents, ("Exh. F"), at 23. She finally received her briefing schedule notice on February 4, 2026, nearly five months later. *Id.* at 26. If she does not prevail at the BIA she intends to file a petition for review before the Tenth Circuit Court of Appeals. Ex. A at ¶ 11.

27. On November 13, 2025, Ms. A.T. submitted a second discretionary parole request to DHS, which was denied without explanation. Exh. G at 42-46.

The Aurora Facility

28. The Aurora facility, where DHS detains Ms. A.T., is a for-profit facility operated by Geo Group, Inc., located in Aurora, Colorado.

29. People detained at the Aurora facility are subjected to punitive conditions akin to penal confinement, including being forced to wear government-issued clothing, having outside recreation denied, and being forbidden from engaging in contact visitation with loved ones. *Daley v. Choate*, No. 22-cv-03043-RM, 2023 WL 2336052 at *4 (D. Colo. Jan. 6, 2023). They are "subject to 'daily outbursts of violence and threats,'" *id.*, and excessive use of solitary confinement.[3] As reported on just this month, noncitizens seeking medical care consistently receive "devastating misdiagnoses and prescriptions for the wrong medicines," and suffer physical from "an overall lack of sufficient calories," and "extreme temperatures."[4]

30. The Aurora facility is notorious for deplorable conditions and systemic failures that jeopardize the health and safety of those in its custody and place detained persons like Ms. A.T. in danger of harm and death. In 2017, a man named Kamyar Samimi died while imprisoned in the Aurora facility due to "egregious violations of medical standards and that these violations were part of systemic issues at the Aurora facility."[5] In a June 2019 investigation, the DHS Office of

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[3] American Immigration Council, National Immigration Project (NIPNLG), Rocky Mountain Immigrant Advocacy Network (RMIAN) 2024 Complaint, "Complaint Underscoring Why People Who Are Transgender and Nonbinary Should Not be Detained in Civil Immigration Detention," (Apr. 9, 2024) available at: https://nipnlg.org/sites/default/files/2024-04/CRCL_complaint- transgender-care.pdf.

[4] Kyle Harris, *Aurora ICE detainees are malnourished and forced to work, advocates report*, DENVERITE, (Mar. 02, 2026), https://denverite.com/2026/03/02/aurora-geo-immigration-jail-ice-conditions-report/.

[5] 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.

Inspector General ("OIG") found the Aurora facility in violation of ICE detention standards.[6] On October 13, 2022, a healthy 39-year-old man, Melvin Calero Mendoza, died after experiencing a medical emergency while in ICE custody in the Aurora facility, leading to a wrongful death suit.[7]

31. Conditions in immigration detention facilities have only worsened, both in Aurora and nationwide, due to mass immigration arrests under the current administration.[8]

32. Respondents are on notice of the inadequate medical and mental health care available at the Aurora facility yet fail to mitigate numerous known violations of DHS' own detention standards.[9]

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[6] Office of Inspector General, "Concerns about ICE Detainee Treatment and Care at Four Detention Facilities", (June 3, 2019) *available at*: https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf

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

[8] Miriam Jordan and Jazmine Ulloa, *Concerns Grow over Dire Conditions in Immigrant Detention*, NEW YORK TIMES (July 1, 2025), https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html.

[9] American Immigration Council 2022 Complaint, "Re: Violations of ICE COVID-19 Guidance, PBNDS 2011, and Rehabilitation Act of 1973 at the Denver Contract Detention Facility," (Feb. 11, 2022) *available at*: https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_medical_neglect_people_sick_covid_19_colorado_facility_complaint1.pdf; AIC 2019 Complaint, "Supplement—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility," (Jun. 11, 2019) *available at*: https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf; AIC 2018 Complaint, "Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility," (Jun. 4, 2018) *available at*: https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf.

Ms. A.T.'s Detention in ICE Custody

33. Ms. A.T. has been detained by DHS for over 23 months at the ICE Aurora Contract Detention Facility. She has never had an individualized bond hearing.

34. Ms. A.T. was deemed incompetent by the Immigration Court and thus falls under the protection of the National Qualified Representative Program Nationwide Policy. Exh. I, Nationwide Policy, ("Exh. I"), at 53-54. Pursuant to this Policy, Respondents are directed to provide a bond hearing after six months to people like Ms. A.T. who are identified as incompetent. *Id.* Respondents have never provided Ms. A.T. with a bond hearing nor any other custody review.

35. Ms. A.T. has undergone cognitive testing and was found to have "mild-to-moderate cognitive impairments, particularly in the domains of visual-perceptual reasoning, attention, and language processing . . . [which] may be significantly influenced by trauma." Exh. J at 67.

36. Ms. A.T. is diagnosed with Complex Post-Traumatic Stress Disorder (PTSD). *Id.* at 68. Although she is given basic medication, she continues to experience serious symptoms including: severe depression, suicidal ideation, flashbacks, nightmares, hypervigilance, chronic stress, dissociation, insomnia, and isolation. *Id.* at 74, 78.

37. Ms. A.T. reports that being detained for almost two years has caused her mental health to deteriorate significantly. Exh. A at ¶ 2.

38. She regularly feels exhausted, anxious, depressed and hopeless, and struggles to leave her bed. *Id.* In September 2025, after eighteen months in detention, Ms. A.T. fell into such a deep depression that she began hearing voices telling her to end her life. *Id* at ¶ 3. A psychologist evaluating Ms. A.T. found that "it is clinically evident that she remains in a highly vulnerable psychological state." Exh. J at 78. He further reported that "[i]f [Ms. A.T.] remains in a setting

where retraumatization is possible (e.g. prolonged detention, repeated legal testimony, or adversarial proceedings), CPTSD symptoms could continue to worsen . . . and may diminish her capacity to recover even if treatment were to become available later." *Id.* at 79.

39. Ms. A.T. also suffers severe and recurring physical illness while in detention. She has had chronic headaches, dizziness, fatigue, fainting spells, and chest pain that resulted in her evacuation to a nearby emergency room. Exh. K, Humanitarian Letter, ("Exh. K") at 82. Beyond that, she has significant gynecological health problems that she attributes to her sexual abuse. Ex. A at ¶ 5. She suffers from severe cramping and excessive menstrual bleeding, symptoms which are painful and difficult to manage in detention. Exh. L, Post-Release Plan, ("Exh. L") at 90. Beyond first-line interventions, Ms. A.T. has never received comprehensive or specialist care for her medical conditions. Exh K at 84.

40. Recently, Ms. A.T. learned that her two-year-old son was left unattended outside. Exh. A at ¶ 3. She has since been working with a social worker in New Jersey to change his temporary custody arrangements to protect him and has suffered from anxiety that he is not being properly cared for in her absence. *Id.* Additionally, Ms. A.T. lost her father recently without the opportunity to appropriately say goodbye or perform grief rituals. *Id.* at ¶ 6.

41. In short, Ms. A.T.'s ongoing detention—reminiscent of her years of captivity first with the arms dealer and then with her sister—along with prolonged separation from her children has detrimentally impacted her mental and physical health.

42. If released, Ms. A.T. has a robust plan for housing and social support, medical and mental health services, civil legal services, and family reunification. Exh. L.

EXHAUSTION OF REMEDIES

43. Based on the plain language of the statute, exhaustion is not required. 28 U.S.C. § 2241; *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required [...] But where Congress has not clearly required exhaustion, sound judicial discretion governs.") (citation omitted). No such mandate exists here.

44. Even if petitioners were required to exhaust administrative remedies prior to seeking a writ under § 2241, exhaustion is unnecessary if futile. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Here, exhaustion is futile.

45. First, presuming Ms. A.T. is detained pursuant to 8 U.S.C. § 1226(a), exhaustion is futile because, although under that subsection of the statute bond is discretionary, the Executive Office for Immigration Review ("EOIR") is under instruction to reclassify all noncitizens detained under § 1226(a) as detained instead under § 1225(b), and thus jurisdictionally barred from bond hearings. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (*vacated by Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026).[10] It is as yet unclear whether Immigration Judges in Aurora will continue to follow EOIR instruction and deny all bond jurisdiction. Either way, in this case, after almost two years of detention, EOIR has not provided Ms. A.T. with a bond hearing.

[10] Despite the initial order in *Maldonado Bautista*, EOIR continued to take the position that *Matter of Yajure Hurtado* was still good law and judges denied bond on that basis. *See Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, AILA, (January 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista. On February 18, 2026, the judge issued an order vacating the BIA precedent, which served to restore jurisdiction for people detained under 8 U.S.C. § 1226(a). However, given the amount of flux on this issue, it remains unclear what EOIR's policy is on the date of this filing.

46. Second, if Ms. A.T. is detained pursuant to 8 U.S.C. § 1226(c), under that subsection of the statute, immigration judges lack jurisdiction to render an individualized custody determination. 8 U.S.C. § 1226(c). Because detention is mandatory under this subsection, requests for release are futile.

47. Third, EOIR lacks authority to rule on the constitutionality of the immigration statutes, and Ms. A.T. cannot challenge the due process violations raised here before the agency. *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020) ("[W]e do not have the authority to entertain constitutional challenges to the statutes and regulations we administer.").

48. Here, Ms. A.T. twice sought discretionary release from ICE. Exh. G. ICE denied both requests. Further exhaustion is not required.

STATUTORY FRAMEWORK

49. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *Jennings v. Rodriguez*, 583 U.S. 281, 292, 138 S. Ct. 830, 841, 200 L. Ed. 2d. 122 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 2503, 150 L. Ed. 2d 653 (2001).

I. Immigration Detention Authority

50. Detention is either discretionary, 8 U.S.C. § 1226(a), or mandatory, §§ 1225(b), 1226(c), 1231(a).

51. The decision whether to release a noncitizen is an individualized determination first made by ICE. 8 C.F.R. § 236.1(c)(8); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021) (noting that ICE officers make the initial custody determination); *Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (indicating that 8 C.F.R. § 236.1(c)(8) "applies only to the initial

custody determination made by the arresting officer and not to immigration judges in bond hearings").

52. If DHS declines to issue bond or parole, individuals detained under 8 U.S.C. § 1226(a) may seek a custody redetermination hearing before an immigration judge, where discretionary release is authorized. 8 C.F.R. § 1003.19(e).

53. In contrast, § 1226 (c) requires that noncitizens convicted of certain crimes be detained during removal proceedings.

54. Respondents incarcerate Ms. A.T. pursuant to 8 U.S.C. § 1226 but have never made a threshold determination as to whether her detention falls under § 1226(a), discretionary detention, or § 1226(c), mandatory detention.

II. T Nonimmigrant Status Provides a Pathway to Permanent Status and U.S. Citizenship to Survivors of Human Trafficking

55. In October 2000, Congress passed the Trafficking Victims Protection Act ("TVPA"), which created a special pathway to lawful immigration status for persons who experienced human trafficking, including forced labor or services (such as commercial sex). The TVPA defines severe forms of trafficking in persons as "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." 22 U.S.C. § 7102(11)(B). Congress passed the TVPA in part because "providing battered immigrant women . . . with protection against deportation" allows them to seek help without "fearing that the abuser will retaliate by withdrawing . . . access to an immigration benefit under the abuser's control[.]" Victims of Trafficking and Violence Protection Act of 2000, Pub L. No. 106-386 § 1502(a)(2).Applicants for T-visa status must demonstrate that they

(a) have been a victim of a severe form of human trafficking, (b) have maintained physical presence in the United States since the human trafficking incident occurred, (c) have complied with reasonable law enforcement requests for assistance, (d) would suffer extreme hardship involving unusual and severe harm upon removal, and (e) provide no reason for suspicion that they have committed human trafficking. 8 C.F.R. § 214.202.

56. If a T-visa applicant is in danger of imminent deportation due to their trafficking, they are entitled to use a procedural safeguard of requesting a Bona Fide Determination from USCIS, which USCIS must review. 8 C.F.R. § 214.205(g)(2). Upon a finding that the application is bona fide, an automatic administrative stay of the final order of removal is granted and remains in effect until a final decision on the T-visa application is made. *Id.*

57. Removal from the United States before a finding on one's bona fide application renders a noncitizen ineligible to pursue a T-Visa. 8 C.F.R. §§ 214.207(a), (b).

58. The applicant's physical presence in the United States must be on account of a severe form of trafficking in persons. USCIS has historically interpreted this requirement in the present tense, meaning that the victim has not left the United States since the trafficking occurred. 8 C.F.R. § 214.11(g) (2002); *see also* "Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for 'T' Nonimmigrant Status," www.federalregister.gov/d/2016-29900/p-222. An executed order of removal from the United States would render a noncitizen survivor of human trafficking ineligible for a T-visa because they are no longer present in the United States.

LEGAL ANALYSIS

59. ICE has never provided a statutory basis for Ms. A.T.'s detention, yet no matter what analysis applies, they all lead to the same result: Ms. A.T.'s detention is unlawful.

60. First, Ms. A.T.'s detention violates the APA because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706.

61. Second, Ms. A.T.'s detention is unconstitutionally prolonged. Under 8 U.S.C. § 1226(a), Ms. A.T.'s detention violates procedural due process because her liberty interest and risk of being erroneously deprived of that liberty interest far outweigh the government's minimal interest in continuing her detention. Under 8 U.S.C. § 1226(c), Ms. A.T.'s detention violates procedural due process because of her detention's length and likely duration, her conditions of confinement, delays in proceedings caused by the government, and the minimal likelihood her removal proceedings will result in a final order of removal. Ms. A.T.'s detention also violates substantive due process because it is insufficiently tied to a legitimate government objective.

A. Ms. A.T.'s Detention Violates the Administrative Procedure Act and the *Accardi* Doctrine

62. Respondents' detention of Ms. A.T. despite the grant of a BFD and deferred action—which provides a stay of removal—tied to Ms. A.T.'s pending T-visa application violates the APA.

63. The Administrative Procedure Act ("APA") provides that a court "shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their own "existing valid regulations." *United States ex rel. Accardi Shaugnessy*, 347 U.S. 260, 265–66, 268 (1954). The *Accardi* doctrine also obligates agencies to comply with procedures it outlines in its internal

manuals. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

64. "Both ICE and USCIS are sub-components of a single agency: DHS." *Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014-CNS, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (citation omitted). ICE's decision to continue to detain Ms. A.T. and seek her removal while she maintains BFD and deferred action status (including a stay of removal) granted by USCIS creates contradictory, opposing positions from two subcomponents of the same agency, which DHS has failed to explain or reconcile.

65. The BFD process was established to prevent removal of trafficking survivors while they await adjudication of their T visa, with the clear intention that survivors remain non-detained, evidenced by the opportunity for deferred action status. Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 89 Fed. Reg. 34875 (April 30, 2024). Although DHS declined to explicitly require release of detained noncitizens in its BFD rule, it did so with the understanding that "ICE also will request expedited adjudication when necessary and appropriate, including when noncitizens are detained. . ." and that ICE "exercises discretion to defer decisions on enforcement action. . ." *Id.* at 34889. ICE has taken neither action here – instead, ICE has aggressively pursued Ms. A.T.'s continued detention and removal and did not seek expedited adjudication, contrary to the agency's own policy, which in turn resulted in the unconstitutional length of Ms. A.T.'s detention.[11]

[11] In fact, ICE has recently overturned decades of agency practice congruent with USCIS's priorities and instead published guidance that it will "no longer routinely request expedited adjudications from USCIS" but may only do so when "it is in *ICE*'s best interests." ICE Policy Number 11005.4, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, (Jan. 30, 2025) at 2-3.

66. The two heads of DHS's Hydra fight each other: one head says, "Issuing NTAs to survivors of trafficking. . .undermines both the humanitarian and law enforcement purposes of the statute," and "As a matter of policy, DHS generally will not remove applicants with pending T nonimmigrant status applications." *Id.* at 34889; 34875. The other head attempts to fast-track Ms. A.T.'s deportation through her prolonged detention – a deportation which would deprive her of the exact benefit to which she has demonstrated she has a bona fide claim. *Alfaro Herrera*, 2026 WL 91470 at *13 (describing how it is "'peculiar'" for USCIS to grant a benefit preventing a person's removal while ICE simultaneously detains them for the purpose of removal) (quoting *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 680 (E.D. Va. 2020)).

67. Under these circumstances, Respondents' continued detention of Ms. A.T. contravenes the humanitarian protection to which she demonstrated bona fide eligibility, undermines the purpose of her grant of deferred action, and is unjustified. Respondents' action is therefore arbitrary and capricious.

68. Ms. A.T. has no adequate remedy at law.

B. Ms. A.T.'s Detention Violates Procedural Due Process Because it is Unconstitutionally Prolonged Under 8 U.S.C. § 1226(a)

69. If Ms. A.T. is detained pursuant to 8 U.S.C. § 1226(a), DHS has deprived her of her statutory right to a bond hearing for almost two years—a clear violation of her due process rights. *See Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, *5 (D.N.M. Sept. 17, 2025) ("Petitioner's continued detention without the bond hearing that should have been provided to him pursuant to § 1226 [(a)] constitutes an ongoing violation of his constitutional right to due process.").

70. Courts in the District of Colorado have used the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976) to determine "what process is constitutionally due" noncitizens detained under § 1226(a). *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024); *Barreno v. Baltasar*, No. 025-CV-03017-GPG-TPO, 2025 WL 3190936, *2-3 (D. Colo. Nov. 14, 2025). Several Circuit courts have also applied the *Matthews* analysis to evaluate 1226(a) detention claims. *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

71. *Mathews* instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. 424 U.S. 319, 333 (1976). Under the *Mathews* test, all factors weigh in favor of a finding that Ms. A.T.'s detention is unconstitutionally prolonged.

72. First, 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 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). 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 States*, 463 U.S. 354, 361 (1983).

73. DHS stripped Ms. A.T. of her liberty and jailed her at the Aurora facility 723 days ago. This Court has repeatedly found civil detention at the Aurora facility to be akin to punitive

imprisonment. *See, e.g., Daley*, 2023 WL 2336052, at *4. The conditions of the Aurora facility place the people incarcerated there in danger of harm and even death.[12] *See supra* ¶¶ 28-32. This reality exacerbates the severity of DHS' decision to deprive Ms. A.T. of her liberty.

74. The length of Ms. A.T.'s 723-day detention heightens her liberty interest. *Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019 WL 2774211, at *10 (D. Colo. July 2, 2019). Indeed, Ms. A.T.'s detention has lasted *fifteen times longer* than the purported detention length of the "vast majority" of mandatorily-detained noncitizen. *Demore*, 538 U.S. at 529, 123 S. Ct. 1708.

75. Unnecessary detention "imposes substantial societal costs," as it "'separates families and removes from the community breadwinners, caregivers, parents, siblings and employees" and causes "ruptures in the fabric of communal life." *Hernandez-Lara*, 10 F.4th at 33 (quoting *Velasco Lopez*, 978 F.3d at 855). Ms. A.T. and her children feel these costs every day – particularly given that she has not been able to see her youngest son since he was five months old.

76. Ms. A.T.'s liberty interest is furthered because her mental health is deteriorating in detention. Ms. A.T. attributes her worsening mental health to having been detained for so long, the uncertainty of not knowing when she will be released or if she will be deported, and being separated from her family. Exh. A at ¶¶ 1, 10, 13.

77. Finally, Ms. A.T.'s liberty interest is heightened by the fact that as a survivor of trafficking she has spent most of her life in forced, punitive confinement. This history exponentially compounds the emotional impact and moral wrong of unconstitutionally prolonging her current detention. And, importantly, ICE's detention of Ms. A.T. runs contrary to DHS's award

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[12] Tom Dreisbach, "Government's Own Experts Found 'Barbaric' and 'Negligent' Conditions in ICE Detention," NATIONAL PUBLIC RADIO (Aug. 16, 2023), https://www.npr.org/transcripts/1190767610?ft=nprml&f=1190767610.

of deferred action—which prevents her removal from the United States—on account of her demonstration of bona fide T-visa eligibility based on being the survivor of human trafficking.

78. Second, Ms. A.T. is at enormous risk of erroneous deprivation of her liberty interest through the current procedures used to detain her. She was detained without an individualized review by a neutral adjudicator, and, despite policy affirmatively requiring individualized review every six months due to Ms. A.T.'s disability, she has received no such review in her past two years in detention. Exh I. Without Court intervention, Ms. A.T. will receive no further process to prevent erroneous deprivation of her liberty. Additional process will ensure she is not erroneously detained one day longer.

79. Third, Respondents will face little burden by adding procedural protections to ensure due process is satisfied. Releasing Ms. A.T. adds no burden to administrative procedures, as the majority of noncitizens currently appear on the non-detained docket.[13] Indeed, should Ms. A.T. be released, Respondents will face *less* financial and administrative burden, due to the high daily cost of detention in comparison to Alternatives to Detention.[14] Should Ms. A.T. be alternatively granted a bond hearing, Respondents will still face no meaningful burden; Respondents afford daily bond proceedings to detained individuals and must afford this process to Ms. A.T.

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[13] Julie Gelatt and Kathleen Bush Joseph, *Explainer: ICE Arrests and Deportations from the U.S. Interior*, MIGRATION POLICY INSTITUTE (Feb. 2025), https://www.migrationpolicy.org/content/ice-arrests-deportations-interior.

[14] ICE Alternatives to Detention (last updated Jan. 7, 2026), https://www.ice.gov/features/atd (noting that Alternatives to detention cost less than $4.20 per person per day, "a stark contrast from the cost of detention" at around $152 per person per day).

80. Moreover, adding additional process promotes the government's interest in minimizing the impact of detention in cases where it serves no purpose. *Velasco Lopez*, 978 F.3d at 854. Respondents have no interest in the prolonged detention of noncitizens who are neither dangerous nor a flight risk: "[T]he public has a strong interest in upholding procedural protections against unlawful detention. . .and the costs to the public of immigration detention are staggering." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1037 (N.D. Cal. 2025).

81. All three *Mathews* factors weigh in Ms. A.T.'s favor and her detention does not comply with what due process requires.

C. Ms. A.T.'s Detention Under § 1226(c) Violates Procedural Due Process Because it is Unconstitutionally Prolonged

82. Respondents are subjecting Ms. A.T. to unconstitutionally prolonged detention in violation of the Fifth Amendment's Due Process Clause. "[A]s the period of . . . confinement grows," so do the required protections, no matter what level of due process may have been sufficient at the moment of initial detention. *Zadvydas*, 533 U.S. at 701. The Supreme Court has upheld only "brief" detentions which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the [noncitizen] chooses to appeal." *Demore v. Kim*, 538 U.S. 510, 529–30 (Kennedy, J., concurring). However, in 2016, the Solicitor General revealed that the statistical information provided by the government and relied upon by the Supreme Court in *Demore* was inaccurate, and the average length of immigration detention was much longer. *Jennings v. Rodriguez*, 583 U.S. 281, 343 (2018) (Breyer, J., dissenting) ("The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did . . . thousands of people here are held for considerably longer than six months without an opportunity to seek bail.").

83. The Second and Third Circuit Courts of Appeals, and many federal district courts, including in the District of Colorado, have held that the Due Process Clause prohibits the prolonged detention of noncitizens in removal proceedings like Ms. A.T. without an individualized bond hearing. *See e.g.*, *Black v. Decker*, 103 F.4th 133, 149 (2d Cir. 2024); *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 208 (3d Cir. 2020); *Daley*, 2023 WL 2336052 at *2 (collecting cases). In *Black*, the Second Circuit recognized that although "*Demore* upheld the government's authority under section 1226(c) to detain noncitizens without an initial bond hearing 'for the brief period necessary for their removal proceedings,' it said nothing about whether due process may eventually require a hearing." *Black*, 103 F.4th at 149 (citing *Demore*, 538 U.S. at 513).

84. In 2024 a split panel of the Eighth Circuit reached a contrary conclusion and announced an unprecedented, sweeping holding that mandatory detention without a bond hearing is constitutionally permissible no matter how long it lasts. *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024). The Eighth Circuit's outlier decision cannot be squared with *Demore* or the cases after it. *Demore* upheld the government's authority under § 1226(c) to detain certain noncitizens without an initial bond hearing "for the brief period necessary for their removal proceedings." *Demore*, 538 U.S.at 513-14. *Banyee*'s extreme characterization that *Demore* sanctions mandatory detention no matter how long it lasts, "remove[s] the Court's holding from its factual context." *Villaescusa-Rios v. Choate*, No. 20-cv-03187-CMA, 2021 WL 269766, at *2 (D. Colo. 2021), and is contradicted by subsequent Supreme Court cases noting that as-applied constitutional challenges remain viable. *See Jennings*, 583 U.S. at 312; *Nielsen v. Preap*, 586 U.S. 392, 420 (2019).

85. Chief Judge Brimmer rejected *Banyee's* sweeping interpretation. In *Martinez v. Ceja,* the court declined to follow *Banyee* and reaffirmed the six-factor test in prolonged mandatory detention challenges in this District. No. 24-CV-03056-PAB, 2024 WL 5168143 (D. Colo. Dec.

19, 2024); *c.f. Utoliti v. Ceja*, No. 1:25-cv-00418 (D. Colo. Feb. 7, 2025) (not adopting holding in *Banyee* but finding that *Demore* does not require a bond hearing during pre-removal detention).

86. The overwhelming majority of courts in this District have applied a six-factor test when analyzing whether a noncitizen's detention under 1226(c) has become unconstitutionally prolonged. Those factors are:

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

Martinez, 760 F. Supp. 3d at 1193; *Daley,* 2023 WL 2336052, at *2–3 (collecting cases).

87. Each of these six elements weigh in favor of a grant of relief to Ms. A.T.

Length of detention

88. Ms. A.T. has already been detained for nearly two years. "[C]ourts have found detention for approximately a year or more constitutionally unreasonable." *Singh v. Choate*, 19-cv-0909-KLM, 2019 WL 3943960 (D. Colo. Aug. 21, 2019) (detention for over twenty months strongly favors granting a bond hearing); *see also Viruel Arias v. Choate*, 22-cv-2238-CNS, 2022 WL 4467245 (D. Colo. Sept. 26, 2022) (finding that the first factor favored the petitioner when detention lasted over fourteen months); *Sheikh v. Choate*, 22-cv-1627- RMR, 2022 WL 17075894 (D. Colo. July 27, 2022) (finding that the first factor strongly favored the petitioner whose detention lasted nearly thirteen months). The first factor weighs strongly in Ms. A.T.'s favor. *Id.*

Likely Duration of Future Detention

89. "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 (quotation omitted). Here, Ms. A.T. will remain detained for many more months or years, while she awaits adjudication of her T visa and the appeal of her fear-based claim.

90. Ms. A.T. submitted her Notice of Appeal to the BIA five months ago, and only just received a briefing schedule. Based on undersigned counsel's experience, once she submits briefing, she will likely wait an additional 3-6 months for a BIA decision. If her case is remanded, Ms. A.T. can expect months more in detention until her case is reheard by an Immigration Judge. If her appeal is denied, Ms. A.T. plans to exercise her right to appeal to the Tenth Circuit, where appeal will likely take a year or more. At that point, her case may then be remanded to the BIA, and back to the immigration court. No one knows when Ms. A.T.'s detention will end.

91. To be clear, even if Ms. A.T. wins her case for protection under CAT before the BIA or the Tenth Circuit, she will not necessarily be released from detention. Instead, DHS will likely continue to detain her while seeking a third country for removal.[15]

92. No matter the outcome in Ms. A.T.'s fear-based claim, DHS *cannot deport her* because she has a stay of removal pending adjudication of her T visa. The current average adjudication times for a T visa with a Bona Fide Determination is 2.25 years.[16] There are currently 30,000 T visa applications pending adjudication and a cap of 5,000 per year, so it could take

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[15] Gisela Salomon, Associated Press, *Migrants face dire conditions and prolonged waits in U.S. detention centers*, PBS (Feb. 9, 2026), https://www.pbs.org/newshour/nation/migrants-face-dire-conditions-and-prolonged-waits-in-u-s-detention-centers ("Among those detained for months are people who have won protection under the United Nations Convention Against Torture, who cannot be deported to their home country but may be sent elsewhere.").

[16] *Case Processing Times*, USCIS, https://egov.uscis.gov/processing-times/ (accessed Feb. 16, 2026).

upwards of six years.[17] Without action from this Court, Ms. A.T. will almost certainly be forced to remain in detention, despite the fact that the adjudication of her T visa application takes place at a USCIS office. In other words, Ms. A.T.'s detention—which is typically meant to ensure a person with a pending immigration proceeding appears for court—bears no relationship to the adjudication of her T visa application.

93. Accordingly, this factor weighs heavily in Ms. A.T.'s favor.

Conditions of Detention

94. For this factor, courts consider whether "the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention." *Villaescusa-Rios*, 2021 WL 269766, at *3 (emphasis added) (quoting *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018)). This Court has repeatedly held that detention at the Aurora facility weighs in a noncitizen's favor because the facility is akin to a penal institution. *Viruel Arias*, 2022 WL 4467245, at *2; *Sheikh*, 2022 WL 17075894, at *4; *Singh*, 2021 WL 2290712, at *3–4; *Villaescusa-Rios*, 2021 WL 269766, at *4; *Martinez*, 2024 WL 5168143, at *5 (determining that "the Aurora facility is more akin to incarceration than a civil confinement.").

95. Ms. A.T. is detained in a facility where she is forced to wear government-issued clothing, she cannot access the outdoors, and she does not have access to contact visitation with loved ones. Worse, as described in detail *supra* ¶¶ 28-32, the Aurora facility routinely places

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[17] Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, NPD, CLAIMS3, queried 7/2025, PAER0018271. The adjudication rate of cases (the number processed in a given year compared to number of applications received) has fallen precipitously from 79.5% in 2021 to 35.4% in 2024, even as the number of applications received has increased by 801%. Erika Gonzalez, *T Visa Applications: Trends and Protections*, COALITION TO ABOLISH SLAVERY AND TRAFFICKING (Jan. 6, 2025), https://casttta.nationbuilder.com/the_rising_trend_of_t_visa_applications_fy2024.

detained individuals in danger of harm and death in solitary confinement. Despite numerous condemnatory reports, conditions at the Aurora facility have only worsened in the past year—at the same time as deaths in ICE detention have hit record numbers.[18] A comparison of Ms. A.T.'s civil incarceration to that of a penal institution weighs heavily in her favor. *Villaescusa-Rios v. Choate*, No. 20-cv-03187-CMA, 2021 WL 269766, at *4 (D. Colo. Jan. 27, 2021)) ("[T]he more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing.").

Reasons for Delay

96. 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 212 (internal quotations omitted); *Sheikh*, 2022 WL 170758944, at *3. A petitioner may not be prejudiced by exercising her right to non-frivolously litigate her case and ensure her proceedings are fundamentally fair. *Martinez v. Ceja*, No. 24-CV-03056-PAB, 2024 WL 5168143, at *6 (D. Colo. Dec. 19, 2024); *de Zarate v. Choate*, 23-cv-571-PAB, 2023 WL 2574370 (D. Colo. Mar. 20, 2023).

97. Furthermore, any delay in Ms. A.T.'s removal proceedings is attributable to Respondents. "[W]here 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.

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[18] Maggie Bryan, *Adams County investigates Aurora ICE facility after allegations of illness, neglect*, DENVER 7 (Jan. 18, 2026), https://www.denver7.com/news/local-news/adams-county-investigates-aurora-ice-facility-after-allegations-of-illness-neglect; Maanvi Singh, et al., *2025 was ICE's deadliest year in two decades. Here are the 32 people who died in custody.*, THE GUARDIAN, (Jan. 4, 2026).

98. Ms. A.T. has not engaged in any dilatory tactics and she continues to diligently defend herself against removal. She has consistently attended all of her immigration proceedings. Once she was deemed incompetent and appointed an attorney, Ms. A.T. worked diligently with her counsel to prepare her applications for relief. Ms. A.T. has never requested a continuance throughout her immigration proceedings. After the immigration judge issued an order denying relief, Ms. A.T. timely filed a Notice of Appeal.

99. In contrast, Respondents *are* responsible for the backlog and slow pace of T visa adjudications. DHS has previously declined prescribed time frames for T visa adjudications. Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 89 Fed. Reg. 34892 (April 30, 2024). The current administration has intentionally created staffing shortages and adjudication policies in USCIS that reduce the agency's ability to approve applications, despite the growing backlog. Complaint, *ICWC v. Noem*, No. 2:25-cv-09848 at *33 (C.D. Cal, Oct. 14, 2025).

100. Therefore, this factor weighs in favor of finding Ms. A.T.'s continued detention unreasonable.

Likelihood that Proceedings Will Result in Removal

101. Ms. A.T. has a strong chance of ultimately receiving permanent relief from removal through the grant of her T visa. Ms. A.T. has already been granted a Bona Fide Determination, demonstrating that her application complies with all initial evidence requirements and that USCIS has completed a background check on her.[19] It is highly likely that she will receive her T visa,

[19] *Policy Manual Chapter 6 – Bona Fide Determinations,* USCIS (accessed Feb. 16, 2026) https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-6.

given that the current T visa approval rate for *all* visas (not just those determined bona fide) was 86% in 2024 and 75% in the first quarter of 2025.[20]

102. Ms. A.T. also has a strong chance of ultimately prevailing on her withholding and CAT claims. As Ms. A.T. will argue before the BIA, the IJ's denial of CAT is legally and factually erroneous. In particular, the IJ committed multiple legal errors including ignoring expert testimony, reports, and voluminous country conditions evidence; failing to consider torture at the hands of Honduran police; failing to aggregate Ms. A.T.'s risk of torture; and failing to meaningfully consider Ms. A.T.'s particularized evidence relating to her likely torture. With these issues now pending before the BIA, it is unlikely that Ms. A.T.'s immigration case will end in a final order of removal. This factor weighs in her favor.[21]

103. In sum, Ms. A.T.'s detention is unconstitutionally prolonged in violation of procedural due process.

D. Ms. A.T.'s Continued Detention Amounts to Impermissible Punishment that Violates Substantive Due Process.

104. Civil detention of a removable noncitizen violates the Constitution if it is punitive. *Wong Wing v. United States*, 163 U.S. 228, 237–38 (1896). Punishment may be

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[20] Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, NPD, CLAIMS3, queried 7/2025, PAER0018271. The historic approval rate for T visas has been well over 50% in the last 18 years, with only the marked outlier of quarters two and three of 2025. *Id.* Apart from these months, the average approval rate in the last 5 years has been 73%. *Id.*

[21] As noted, even if Ms. A.T. loses the appeals of her immigration case, she cannot be removed until adjudication of her T visa – which could be years in the future. In *Sheikh v. Choate*, this Court held that the government's inability to ultimately remove a noncitizen weighed in his favor. 2022 WL 17075894, at *4 (D. Colo. 2022). Here, the government's inability to remove Ms. A.T. while her T visa adjudication is pending or upon grant of her T visa tip the balance of this factor in her favor.

inferred "if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless." *Bell v. Wolfish*, 441 U.S. 520, 53 (1979). At a certain point, detention can "become excessively prolonged, and therefore punitive," resulting in a due process violation. *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987). Here, Respondents have violated Ms. A.T.'s substantive due process rights because her prolonged detention serves no legitimate objective and instead contravenes Congressional intent and DHS's own policy meant to protect survivors of human trafficking.

105. There are only two recognized legitimate purposes for civil immigration detention: preventing flight and guarding against danger to the community. *See Zadvydas*, 533 U.S. at 690. Here, there is no evidence that Ms. A.T. is either a danger or a flight risk (*see infra* ¶¶ 115-120). DHS has granted Ms. A.T. a BFD for her T visa—meaning the agency has already reviewed Ms. A.T.'s entire history, including her sole criminal contact, and determined she is not a public danger. Nor is there any evidence that Ms. A.T. is a flight risk. Her pending T visa with BFD gives her a strong incentive to follow through with her immigration proceedings to obtain legal status and remain in the country where two of her children, one of whom is a U.S. citizen, reside.

106. First, Ms. A.T.'s detention is based purely on her sole criminal contact, which pre-dates receipt of her BFD, which conferred her deferred action status – where DHS determined that Ms. A.T. is not a public danger. In other words, the same agency that refuses to release Ms. A.T. from detention, allegedly for her dangerousness (Exh. G), already determined she was not dangerous. Any dangerousness justification here is specious.

107. Second, Ms. A.T.'s detention undermines Congress's intent to protect survivors of trafficking and DHS's regulatory intent to permit survivors to obtain "certain stabilizing benefits."

Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 89 Fed. Reg. 34875 (April 30, 2024). *See supra* ¶¶ 65.

108. In a recent analogous case, *Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014-CNS, 2026 WL 91470 (D. Colo. Jan. 13, 2026), the Court held that detention of a petitioner with Special Immigrant Juvenile ("SIJ") status violated substantive due process because protections inherent in that status undermined the validity of petitioner's underlying removal. The Court explained that removing the petitioner before he could access statutory benefits deprived him of his rights and was contrary to congressional intent. *See id.* at *7-8. The Court also found that DHS could not pursue petitioner's removal on the grounds stated because of petitioner's SIJ status, which "further underscores the illegitimacy of Petitioner's detention and demonstrates that Respondents cannot establish the necessity of depriving Petitioner of his constitutionally protected rights." *Id.* at 9 (footnote omitted).

109. Here, the removal proceedings against Ms. A.T.—and thus her detention incident to these proceedings—are similarly lacking in legitimacy.[22] The same concerns the Court had in *Alfaro Herrera* animates this case: removing Ms. A.T. before her T visa is adjudicated contravenes Congress's intent to protect survivors of trafficking and deprives her of the "certain stabilizing benefits," to which applicants with a BFD are entitled. 89 Fed. Reg. 34875.

110. Ms. A.T.'s BFD status, deferred action, and accompanying stay of removal prevent DHS from deporting her during the protracted T visa adjudication process. Thus, as in

[22] Ms. A.T. is not bringing a challenge to her removal proceedings in this Petition. Rather, the validity of such proceedings is directly relevant to her claims that detention incident to removal violates her constitutional rights.

Alfaro Herrera, the fact that DHS cannot functionally remove her due to her BFD and deferred action status undermines the legitimacy of her detention pursuant to such removal.

111. Respondents' arbitrarily prolonged detention of Ms. A.T. is punitive and the court should order her immediate release.

A. The Appropriate Remedy Is Immediate Release; or in the Alternative, a Custody Hearing Before This Court Where DHS Bears the Burden of Proof

1. Ms. A.T. is not lawfully detained and immediate release is warranted.

112. After Ms. A.T. was placed in detention, USCIS—a subagency of DHS—found that she demonstrated bona fide eligibility for a T visa and ICE cannot justify her continued detention. As a result, this Court should order her immediate release. *Yanez Chavez v. Baltazar*, 2026 WL 516934, at *3 (D. Colo. Feb. 25, 2026) (ordering immediate release where detention not justified); *Alfaro Herrera*, 2026 WL 91470, at *12 (ordering immediate release where "ICE's actions in pursuit of Petitioner's removal are arbitrary, capricious, and contrary to law.").

2. Due Process requires Ms. A.T.'s immediate release.

113. To comport with due process, this Court should order Ms. A.T.'s immediate release because: 1) her detention presents exceptional circumstances; 2) a bond hearing would not satisfy due process because Immigration Judges are not positioned to rule on constitutional questions; and 3) a bond hearing would inevitably lead to further prolonging Ms. A.T.'s detention, compounding the violation of her rights.

a. Due process requires Ms. A.T.'s immediate release because of the exceptional circumstances of her detention.

114. Ms. A.T.'s 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) (citing *Swann v. Charlotte-Mecklenburg Board of Education*, 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 the most appropriate remedy given the gravity of the due process and APA violations. *Alfaro Herrera*, 2026 WL 91470 at *13; *Tinajero Rodriguez, v. Mason*, No. 2:26-CV-00122, 2026 WL 510426, at *2 (S.D.W. Va. Feb. 24, 2026) (". . .[R]elease is the appropriate remedy both because it is the traditional remedy in a successful habeas action for unlawful detention and because the evidence presented in this and other cases establishes that the Government would be unlikely to hold a timely bond hearing under procedures that comport with due process.").

115. *First*, Ms. A.T. is in the unique situation of having already received a BFD and deferred action stemming from her pending T visa application. Ms. A.T. "has a right to make the [visa] applications and have them fully adjudicated without undue interference." *S.N.C. v. Sessions*, No. 18 CIV. at *1. Release is the proper remedy to ensure that Ms. A.T.'s mental and physical health are not permanently harmed, and she is not forced to give up her case for protection before her T visa can be adjudicated.

116. Courts in this District have found that release is appropriate when the petitioner has been subject to some prior screening with no findings of flight risk or danger. *Singh v. Baltazar*, No. 1:26-CV-00336-CNS, 2026 WL 352870, at *3 (D. Colo. Feb. 9, 2026); *Alfaro*

Herrera, 2026 WL 91470, at *13.[23] Although Ms. A.T. has not had a formal bond hearing, her history in front of USCIS, the criminal court, *and* Respondents demonstrates she is neither a flight risk nor a danger.

117. When evaluating Ms. A.T.'s eligibility for her T visa BFD, USCIS considered the question of Ms. A.T.'s dangerousness. USCIS ran a background check on Ms. A.T. (which included all her present criminal history) and reviewed "other relevant discretionary factors."[24] USCIS, considering concerns that generally overlap with inadmissibility grounds (*id.*), found that Ms. A.T. did not present public safety concerns and granted her the BFD.

118. Ms. A.T.'s plea deal in criminal court also reflects the criminal court's implied opinion that Ms. A.T. presents neither a flight risk nor a danger. Ms. A.T. received *no* jail time and four years of concurrent probation for her sole criminal charge. Exh. H. The court trusted Ms. A.T. to remain in her community and to attend any probation check-ins.

119. While in immigration detention, Ms. A.T. has exhibited model behavior, never receiving any disciplinary write ups. Exh. A at ¶ 14. Finally, Respondents themselves have

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[23] The cases cited involve detention under §1226(a), however "a number of federal courts have ordered the release of petitioners who had been held in custody under 8 U.S.C. §1226(c) pending review by the BIA or by the appropriate circuit court." *Magasouba v. Norris*, 546 F. Supp. 2d 153, 155 (D. Vt. 2008); *see Diomande v. Wrona*, No. 05-cv-73290, 2005 WL 3369498 (E.D. Mich. Dec. 12, 2005) (release ordered where petitioner detained under § 1226(c) for 21 months); *Hyppolite v. Enzer*, No. 3:07CV729 JBA, 2007 WL 1794096, *1 (D. Conn. June 19, 2007) (finding release warranted based on "no-bond detention for more than 15 months plus "increased likelihood [petitioner] will be granted cancellation of removal"); *Victor v. Mukasey*, No. 3:CV-08-1914, 2008 WL 5061810, *5 (M.D. Pa. Nov. 25, 2008) ((ordering release of petitioner held under 1226(c) for 16 months).

[24] *Chapter 6 – Bona Fide Determinations*, USCIS (accessed Feb. 17, 2026), https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-6.

implicitly admitted that they do not find Ms. A.T. to be a flight risk. Neither denial of her release requests mentions flight risk. Exh. Indeed, it would appear Respondents do not find Ms. A.T. to be *either* a danger or a flight risk: Respondents cited neither reason in denying her most recent request. *Id.* at 45-46.

120. Ms. A.T. has been assessed by multiple neutral and non-neutral adjudicators and never found to be a danger or a flight risk. While the Court should consider the risks posed by releasing any petitioner from detention, "the existence of some risk associated with release does not bar the Court from ordering it as a remedy." *Mathon v. Searls*, 623 F. Supp. 3d 203, 219 (W.D.N.Y. 2022). Due process demands Ms. A.T.'s release.

121. Second, even if a higher "exceptional circumstances" showing is necessary for a remedy of immediate release, Ms. A.T. meets that standard. *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981); *see Zadvydas*, 533 U.S. at 701. Ms. A.T.'s circumstances are strikingly similar to that of the petitioner in *S.N.C. v. Sessions*, also a T visa applicant. *S.N.C. v. Sessions*, No. 2018 WL 6175902, at *6. As the Court, explained, "Petitioner's case also presents extraordinary circumstances that require granting bail for any remedy related to the adjudication of her visa applications to be effective. . . [because the] difficulties she faced as a human trafficking and domestic abuse survivor have let her with post-traumatic stress disorder, a condition that the detention environment aggravates." *Id.*

122. Ms. A.T. is a victim of severe sex and labor trafficking who has been imprisoned physically and mentally for nearly her entire adult life. Her detention in ICE custody has exacerbated the symptoms of her Complex PTSD, at times so severely that she has hallucinated. Exh. A at ¶ 2. Her C-PTSD also means that testifying in future court hearings, such as a bond

hearing, would cause her "significant psychological distress, including heightened anxiety, intrusive memories, dissociation, memory issues, or other acute stress reactions." Ex. J at 71. Even under a higher standard, Ms. A.T. merits release as remedy.

i. A bond hearing would not satisfy due process because Immigration Judges are not positioned to rule on constitutional questions and there are countless recent examples of their failure to provide constitutionally-adequate bond hearings.

123. Bond hearings pursuant to writs by the District Court are due process hearings. *Mathon v. Searls*, 623 F. Supp. 3d 203, 217 (W.D.N.Y. 2022). Yet IJs are not permitted to engage in constitutional analysis under the auspices of their roles. *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020); *Matter of Cruz to Ortiz*, 25 I&N Dec. 601, 605 (BIA 2011). Immigration Judges are thus not correctly positioned to engage in the analysis necessary to determine whether a bond hearing following a granting of Ms. A.T.'s habeas is constitutionally adequate.

124. Ordering an IJ to conduct a bond hearing here would not provide an appropriate remedy for the due process violations that have already occurred and further delay will exacerbate the harm caused by Ms. A.T.'s prolonged detention.

125. Over the past year, EOIR has engaged in systematic dismissal of hundreds of immigration judges nationwide[25] and appointment of temporary judges in their place has eroded

[25] Ximena Bustillo and Anusha Mathur, *The DOJ has been firing judges with immigrant defense backgrounds*, NPR (Nov. 6, 2025) https://www.npr.org/2025/11/06/g-s1-96437/trump-immigration-judges-fired (analyzing judicial dismissals and finding that 44% of those fired had backgrounds defending immigrants, more than double the share of those judges who had only prior work history at DHS).

institutional knowledge[26] vital to providing Ms. A.T. with the individualized assessment at her bond hearing that due process requires.[27] (As recently as February 6, 2026 of this year, in fact, three new temporary judges have been appointed to the Denver Immigration Court, none of whom have prior immigration court experience.)[28]

126. Because IJs are not properly positioned to do constitutional analysis, and therefore lack practice in doing so, they routinely err in conducting Court-ordered bond hearings.

127. In recent months, immigration judges have shown a pattern of failing to effectively follow District Court orders for bond hearings, particularly applying the correct burden-shifting standard. *Cervantes Arredondo v. Baltazar*, No. 1:25-CV-03040-RBJ, Order, ECF No. 26 at 4-7, (D. Colo. Oct. 31, 2025) (finding the Immigration Judge incorrectly applied the burden to the noncitizen); *Izaguirre v. Freden*, No. 6:25-CV-6672-EAW, 2025 WL 3551788, at *1 (W.D.N.Y. Dec. 11, 2025) (same); *Chiguano v. Lowe*, No. 1:24-CV-02210-JPW, 2025 WL

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[26] Geoff Bennett and Ali Schmitz, *Ousted immigration judge describes deepening court backlog*, PBS (Nov. 12, 2025) https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog.

[27] Ms. A.T. also notes profound concern that the Immigration Court can no longer be considered a neutral adjudicatory body, given the pressure exerted upon Immigration Judges by the new administration. In recent posts hiring new judges, DHS Secretary Kristi Noem referred to the judges as "deportation judges," demonstrating the non-neutral stance DHS wishes the judges to have. Ellen M. Gilmer, *Trump DOJ Recruits 'Deportation' Judges in Enforcement Push (1)*, BLOOMBERG LAW (Nov. 21, 2025) https://news.bloomberglaw.com/us-law-week/trump-doj-recruits-deportation-judges-in-enforcement-effort; Anna Alejo, *Fewer judges serving backlogged Colorado immigration courts after firings and severance offers*, CBS NEWS (July 21, 2025) https://www.cbsnews.com/colorado/news/fewer-judges-backlogged-colorado-immigration-courts-firings/ ("The union representing the judges says these actions are harming judicial independence"); Maurice DuBois et al., *3 immigration judges speak out about their firings: 'It was arbitrary, unfair'*, CBS NEWS (July 24, 2025) https://www.cbsnews.com/news/immigration-judges-speak-out-firings-arbitrary-unfair/ ("We as judges were in fear, we were concerned. . .That makes it very difficult to be impartial.").

[28] *EOIR Announces 6 Immigration Judges and 27 Temporary Judges*, U.S. DEPARTMENT OF JUSTICE (Feb. 5, 2026), https://www.justice.gov/eoir/media/1426676/dl?inline.

3280946, at *2 (M.D. Pa. Nov. 25, 2025) (same); *Akhemedov v. Pittman, et al.,* No. CV 25-13734 (MCA), 2026 WL 323404, at *3 (D.N.J. Feb. 6, 2026) (finding the IJ did not apply the 'clear and convincing' evidence standard); *Chiguano v. Lowe*, No. 1:24-CV-02210-JPW, 2025 WL 3280946, at *2 (M.D. Pa. Nov. 25, 2025) (same); *see also L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 406 (E.D.N.Y. 2025) (noting that petitioner's Bail Motion "lists nearly as many cases in which bond hearings by IJs were found constitutionally lacking by district courts as the Government Respondents list for the proposition that IJs are routinely ordered to conduct these bond hearing.").

128. In court-ordered bond hearings, IJs are also denying due process by relying on inaccurate, unauthenticated, or insufficient evidence and failing to consider evidence presented by the noncitizen. *See e.g. Chiguano v. Lowe*, No. 1:24-CV-02210-JPW, 2025 WL 3280946, at *3 (M.D. Pa. Nov. 25, 2025); *Meija Orozco v. Lyons*, 1:25-cv-01762-AJT-WEF, Order, ECF No. 20 at 5-6 (E.D. Va Dec. 1, 2025); *Said v. Noem*, No. 25-cv-938-MOC, Memorandum of Decision and Order, ECF No. 24 at 9 (W.D.N.C. Feb 4, 2026); *Trigueros v. Guadian*, No, 26-cv-00205, Order, ECF No. 13, at 6-7 (E.D. Va Feb. 18, 2026).

129. Finally, whether out of lack of expertise or professional pressure, IJs have also shown a pattern of denying bond in post-habeas proceedings based on generalized and irrelevant assessments, such as characterizing unlawful entry into the United States by itself as establishing flight risk or treating minor discrepancies in documents as standalone evidence of deceitfulness. Exh. M, Declaration of Jorge Artieda, Esq., at ¶¶ 25-28. Upon information and belief, this pattern is occurring with Immigration Judges in the Aurora Immigration Court.

i. A bond hearing would not satisfy due process because predictable IJ error will lead to Ms. A.T.'s further prolonged detention.

130. Because IJs are not currently positioned to provide constitutionally adequate bond hearings, petitioners like Ms. A.T. must return to court to enforce the order, prolonging their already unconstitutional detention and compounding violation of their rights. *See supra* ¶ 108; *Picado v. Hyde*, No. 26-CV-065-JJM-PAS, 2026 WL 352691, *7 (D.R.I. Feb. 9, 2026) (ordering release because "[petitioner] has participated in two bond hearings that two separate judges have found to be deficient. It makes little sense to provide him with a third.").

131. Moreover, Ms. A.T. rightfully fears that, if she is granted bond in lieu of immediate release, Respondents will fail to timely provide a bond hearing or will impose unauthorized additional restrictions on her release – as they have in dozens of other cases this year.[29] *Briceno Solano v. Mason*, No. 2:26-CV-00045, 2026 WL 311624, at *20 (S.D.W. Va. Feb. 4, 2026) ("[T]his Court has no faith that the Government would comply with an order to hold a bond hearing.").

132. Even if the District Court is later able to correct these due process violations, these actions will nonetheless prolong Ms. A.T.'s unconstitutional detention.

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[29] *Juan T.R. v. Noem*, No. 26-CV-0107 (D. Min, Jan. 26, 2026) at *2 (identifying 96 orders in 74 habeas cases which DHS had violated); *Marco M. v. Bondi*, No. 25-CV-4816 (MJD/JFD), 2026 WL 194406 (D. Minn. Jan. 25, 2026) ("There has been an undeniable move by the Government in the past month to defy court orders or at least to stretch the legal process to the breaking point in an attempt to deny noncitizens their due process rights. . ."); *Kumar v. Soto*, No. 2:26-cv-00777-MEF, ECF No. 21-1 (D.N.J. Feb. 13, 2026) (enumerating 52 instances where the government violated court orders since Dec. 5, 2025, including twelve cases where DHS failed to timely provide bond hearings and three where ICE imposed unauthorized additional restrictions on petitioners' release). *See also* Kyle Cheney, *How ICE defies judges' orders to release detainees, step by step*, POLITICO (Feb. 10, 2026), https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727.

133. For the sake of due process, judicial efficiency, and effective adjudication of Ms. A.T.'s bond hearing, Ms. A.T. therefore requests immediate release.

a. *In the alternative, due process requires Ms. A.T. to receive an individualized bond hearing before a neutral adjudicator in which the burden of proof is on the government.*

134. In the alternative, due process requires an individualized bond hearing for Ms. A.T. *Daley*, 2023 WL 2336052, at *5.

i. To ensure due process, this bond hearing should take place before the District Court.

135. District Courts have authority to conduct bond hearings for § 2241 habeas petitioners. *See Zepeda Rivas v.* Jennings, 445 F.Supp.3d 36, 41 n.17 (N.D. Cal. 2021) (collecting cases); *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) ("[T]he authority to conduct [a §2241 habeas bond] hearing has long been recognized as an essential ancillary aspect of our federal habeas corpus jurisdiction . . . there is nothing extraordinary or novel about this practice"); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 404-07 (E.D.N.Y. 2025) ("The Court certainly defers to the immigration courts with respect to their areas of expertise and jurisdiction—including decisions to 'commence proceedings, adjudicate cases, or execute removal orders.' But federal courts are the arbiters of constitutional rights such as those at issue in the Petition.").

136. In *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 404-07 (E.D.N.Y. 2025), the Court decided to hold the bond hearing itself, considering factors such as the need for constitutional analysis, petitioner's complicated immigration history, and the fact that the petitioner had been deemed incompetent by an IJ and needed safeguards which "require[d] the heightened

constitutional oversight only afforded by Article III courts." *Id.* at 405-07, FN 11. The Court further explained, that "these are not ordinary times. . . [and] [t]he sudden and precipitous rise in removal cases, and the strain they are creating on the immigration system, also prompt the Court to be concerned about how expeditiously and effectively an IJ will be able to hold a bond hearing in this matter. Id. at 407. *See also Centeno-Martinez v. Jamison*, No. CV 25-3593, 2025 WL 3157711, at *3, FN 4 (E.D. Pa. Nov. 12, 2025) (finding it appropriate for Court to conduct its own bond hearing where petitioner had been detained for over 18 months, and "the Court's primary concern is addressing the constitutional violation and ensuring the proper standard is applied at the bond hearing.")

137. Like the petitioner in *L.G.M.,* Ms. A.T. has been deemed incompetent, and her claim involves constitutional analysis, as well as complicated appeal proceedings plus pending T-visa adjudication. For these reasons this Court is best positioned to provide her with a constitutionally-compliant hearing.

138. Where – as here – the need for constitutional scrutiny outweighs claimed efficiencies or routine practice, the District Court, not the Immigration Court, should oversee the bond hearing.

i. Regardless of which court oversees the bond hearing, due process requires strict conditions for the bond hearing.

139. To comply with due process in a bond hearing in front of either this Court or the Immigration Court, this Court should require the conditions enumerated below.

140. *First*, and most crucially, the government must justify Ms. A.T.'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.

141. "[T]he overwhelming majority of courts" have "held that the government must bear the burden by clear and convincing evidence" when there is a due process violation stemming from prolonged detention. *Pedro O. v. Garland*, 543 F. Supp. 3d 733, 742 (D. Minn. 2021) (*citing German Santos*, 965 F.3d at 212). Courts in this District agree. *L.G. v. Choate*, No. 1:24-CV-01200-RMR, 2024 WL 5054918, at *10 (D. Colo. July 19, 2024); *Juarez*, 2024 WL 1012912, at *8; *Daley*, 2023 WL 2336052, at *5; *Viruel Arias*, 2022 WL 4467245, at *3; *Sheikh*, 2022 WL 17075894, at *4; *Villaescusa-Rios*, 2021 WL 269766, at *5; *Singh*, 2019 WL 3943960, at *7; *but see de Zarate*, 2023 WL 2574370, at *5 (finding a due process violation and ordering a bond hearing but declining to place the burden of proof on the government); *see also Martinez*, 2024 WL 5168143, at *7 (same).

142. The Circuit Courts that have meaningfully considered the constitutionality of placing the burden on the noncitizen in § 1226(a) bond hearings applied the three-factor balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), described *supra* ¶ 78. *Rodriguez-Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2025); *Hernandez-Lara*, 10 F.4th at 27; *Velasco Lopez*, 978 F.3d at 851. 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.

143. To the first factor, the private interest at stake is freedom from imprisonment, i.e., "the most significant liberty interest there is." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v.*

Rumsfeld, 542 U.S. 507, 529 (2004)). As to the second factor, current bond procedures cause repeated deprivation of a noncitizen's rights. Noncitizens must prove a negative – that they are *not* a flight risk or danger – in order to prevail at bond hearings, which is an inherently more difficult burden to meet than proving the affirmative. *Elkins v. United States*, 364 U.S. 206, 218 (160). Compounding the burden, noncitizens like Ms. A.T. "experience difficulty in gathering evidence on their own behalf," lack proficiency in English, and government representatives know procedures and preferences of individual IJs far better than detained individuals. *Hernandez-Lara*, 10 F.4th at 30-3119, 30-31. Noncitizens like Ms. A.T. "start[] out behind the eight ball in a bond proceeding, and the opportunities for prejudicial error abound." *Id.* at 31. Regarding the third factor, the current bond framework does not serve government interests and changing it would cause no undue burden. *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 presumed on such findings.").

144. *Second*, DHS cannot use unauthenticated evidence to meet its clear and convincing evidence burden. *See Woldemeskel v. I.N.S.*, 257 F.3d 1185, 1192 (10th Cir. 2001) (noting favorably that the immigration judge and the BIA did not consider a document because it was not authenticated according to 8 C.F.R. § 287.6(a)–(b)).

145. *Third*, Ms. A.T. should be permitted at the bond hearing to provide any relevant evidence to contradict DHS's argument that she is a flight risk or danger.

146. *Fourth*, in the bond hearing, the weight the adjudicator gives to Ms. A.T.'s criminal history must be considered in light of the impact of her disabilities and trauma history.

147. *Fifth*, due process requires consideration of alternatives to detention. *See Bell*, 441 U.S. at 538. 83. Here, Ms. A.T.'s release plan will mitigate any risk of flight. *See* Exh. L. This release includes comprehensive support to ensure her successful reintegration, including access to stable housing with her sponsor and assistance from local organizations for her medical and mental health care. *Id.*

148. *Sixth*, if a bond is granted, due process requires consideration of Ms. A.T.'s ability to pay the bond. *Hernandez v. Sessions,* 872 F.3d 976, 990-91 (9th Cir. 2017) (concluding that due process likely requires "consideration of the detained noncitizens' financial circumstances, as well as of possible alternative release conditions").

149. *Seventh*, if bond is granted, due process requires that Ms. A.T.'s release includes no conditions that effectively constitute re-detention, such as GPS monitors or other limitations to her freedom. *See Batz Barreno v. Baltasar*, No. 25-CV-03017-GPG-TPO, 2026 WL 120253, at *2 (D. Colo. Jan. 15, 2026) ("Courts examining the issue have found that use of a GPS ankle monitor constitutes custody for purposes of habeas corpus and due process. . . ICE's use of a GPS monitor and other measures instead of a ball and chain makes no difference.")

150. *Eighth*, if bond is granted, due process requires that DHS not be permitted to invoke the automatic stay ("autostay") provision of 8 C.F.R. 1003.19(i)(2). The autostay provision already implicates due process concerns and has been rejected in district courts nationwide. *See Merchan-Pacheo*, No. 1:25-cv-03860-SBP, at 20. (noting the "near unanimity" of "'[a]t least 50 district court decisions across the United States in the last 6 months alone' which have found that 'DHS's application of the automatic stay. . .violates a non-citizens due process under the Fifth Amendment.'"). These concerns are even more relevant in recent months

as "DHS now appears to be nearly universally implementing the automatic stay with regard to immigration judges' rulings." *Id.* at 17 n.7. It would violate Ms. A.T.'s due process rights for a judge to find she merits bond, only to have DHS unilaterally prolong her detention through autostay.

151. *Ninth*, A contemporaneous written account of findings of fact and conclusions of law should be required if bond is denied. *See De la Lana-Castellon v. INS*, 16 F.3d 1093, 1096, 1098 (10th Cir. 1994) (holding that due process requires a "decision maker to actually consider the evidence and argument that a party presents" and issue a non-boilerplate decision).

152. *Tenth*, should Ms. A.T. be released on bond, Respondents should be enjoined from re-detaining Ms. A.T. absent a new criminal arrest or significantly changed circumstances. Should she be re-detained, Respondents must comply with all regulatory and due process requirements.

153. *Finally*, given the concerns of Ms. A.T. proceeding with her bond hearing before the Immigration Court, Ms. A.T. also requests that the District Court retain jurisdiction and order unconditional release if the government fails to comply with the initial habeas order.

CLAIMS FOR RELIEF

COUNT I

Violation of the Administrative Procedure Act (Arbitrary and Capricious Agency Action & Violation of the *Accardi* Doctrine)

154. Ms. A.T. re-alleges and incorporates by reference the paragraphs above.

155. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is

"contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)–(C).

156. Detaining Petitioner in pursuit of forced removal from the United States renders Petitioner ineligible for T visa status, constituting a *de facto* revocation of her deferred action status and a denial of her right to seek T nonimmigrant status in the United States and leading to a result contrary to the law.

157. Detaining Petitioner for the purposes of removal proceedings is arbitrary and capricious because it would contravene the very purpose of the T visa and TVPA statutory frameworks and contradicts DHS's prior USCIS decision granting Petitioner's BFD and deferred action, permitting her to remain in the United States with a stay of removal.

158. Respondents' decision to detain Petitioner directly conflicts with its grant of her BFD and deferred action and is arbitrary and capricious and offends due process under the *Accardi* doctrine.

159. Respondents' detention of Petitioner in pursuit of her removal is arbitrary and capricious, not in accordance with the law, and contrary to constitutional right.

COUNT II

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

160. Ms. A.T. re-alleges and incorporates by reference the paragraphs above.

161. The Fifth Amendment's Due Process Clause forbids the government from depriving any person of liberty "without due process of law."

162. As applied to Ms. A.T., her prolonged mandatory detention without an individualized bond hearing is unconstitutional because ICE detained her over 23 months ago and has never demonstrated that her ongoing detention is justified; her detention is certain to continue for many more months, if not years, and has no end in sight absent intervention from this Court; her detention at the Aurora facility is indistinguishable from criminal confinement; she has diligently pursued her claims to relief from removal, and did not cause significant delay in her immigration proceedings; and Ms. A.T. is not likely to be removed because she has substantial claims against deportation.

163. For these reasons, Petitioner's continued detention violates her Fifth Amendment procedural due process rights.

COUNT III

Violation of Fifth Amendment Right to Substantive Due Process (Prolonged Detention Amounting to Unlawful Punishment)

164. Ms. A.T. reincorporates all prior allegations as though fully set forth therein.

165. The Fifth Amendment to the U.S. Constitution guarantees those in civil detention, including immigration detention, the right to be free from punitive conditions of confinement. Respondents violate this guarantee when conditions of confinement lack a reasonable relationship to any legitimate governmental purpose, *i.e.* when a custodian's actions are excessive in relation to their purpose.

166. As applied to Ms. A.T., her detention under 8 U.S.C. § 1226 violates her substantive due process rights because it is punitive in nature, which is not permitted for civil detention; because it is not reasonably related to a legitimate goal and is arbitrary and purposeless; because

it is excessive and indefinite in nature; because alternatives to detention exist; and for the other reasons set out more fully *supra* in ¶¶ 104-111.

167. Respondents' continued and prolonged detention of Petitioner deprives her of her strong liberty interest and violates her Fifth Amendment right to substantive due process.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Ms. A.T. outside the jurisdiction of the District of Colorado and the United States pending the resolution of this case;

(3) Pursuant to 28 U.S.C. § 2243, issue an Order to Show Cause or Order to Answer ordering Respondents to show cause within three days why the writ should not be granted;

(4) Grant a writ of habeas corpus directing Respondents to immediately release Petitioner on her own recognizance or, in the alternative, order her immediate release and afford her a subsequent individualized bond hearing before this Court where: (1) Respondents bear the burden of establishing by clear and convincing evidence that continued detention is justified; (2) alternatives to imprisonment such as community-based alternatives to detention including conditional release, parole, as well as ability to pay a bond must be considered; (3) undue weight cannot be given to allegations underlying dismissed criminal charges; and (4) undue weight is not placed on unauthenticated or antiquated documents regarding alleged criminal legal contacts;

(5) Declare that Respondents' actions to arrest and detain Petitioner violate the Administrative Procedures Act;

(6) Declare that Respondents' continued detention of Petitioner violates Petitioner's substantive and procedural due process rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution; Temporarily restrain and preliminarily and permanently enjoin Respondents from imposing additional indefinite conditions of release, such as a GPS monitor or check-ins with ICE in violation of Petitioner's rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

(7) Temporarily restrain and preliminarily and permanently enjoin and restrain Respondents from re-detaining Petitioner unless they bear the burden of proof and demonstrate by clear and convincing evidence at a pre-deprivation bond hearing before an impartial adjudicator that he is a flight risk or danger to the community such that his physical custody is legally

justified, at which, the adjudicator must consider alternatives to detention and Petitioner's ability to pay;

(8) Order the return of all of Petitioner's belongings;

(9) Require Respondents to transport Petitioner, at their own expense, back to her place of residence;

(10) Award Petitioner her costs and reasonable attorneys' fees under the Equal Access to Justice Act as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

(11) Grant any further relief as this Court deems just and proper.

Dated: March 6, 2026

s/Shira Hereld
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VERIFICATION

I, Shira Hereld, 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: March 6, 2026

/s/ Shira Hereld

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Shira Hereld, hereby certify that on March 6, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Shira Hereld, hereby certify that I have mailed a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on March 6, 2026.

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

And to:

Pamela Bondi
Attorney General of the United States
U.S. Department of Justice
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And to:

Markwayne Mullen and Todd Lyons
Office of the General Counsel
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And to:

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And to:

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/s/ Shira Hereld