IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-3017-GPG-TPO

KHRISTYNE BATZ BARRENO,

Petitioner,

v.

JUAN BALTAZAR, Warden, Aurora Contract Detention Facility,
PAMELA BONDI, Attorney General of the United States,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Director, U.S. Immigration and Customs Enforcement, and
ROBERT GUADIAN, Director, Denver Field Office, U.S. Immigration and Customs Enforcement,

Respondents.

RESPONSE TO PETITIONER'S VERIFIED
PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1)

Respondents submit this response to Petitioner's Verified Petition for Writ of Habeas Corpus (ECF No. 1, the Petition). As explained below, the Court should deny the Petition because Petitioner's detention is authorized by statute and her challenges to her detention are thus unavailing.

INTRODUCTION

The Department of Homeland Security (DHS) is detaining Petitioner under a statutory provision, 8 U.S.C. § 1225(b)(2)(A). Noncitizens detained under this section, like Petitioner, are ordinarily not eligible for bond hearings. Nevertheless, Petitioner argues that due process requires her to receive a bond hearing in seven days.

Petitioner's argument is based on case law developed based on a different

provision, 8 U.S.C. § 1226(a), which, unlike § 1225(b), provides for bond hearings in certain circumstances. It is unclear whether Petitioner is challenging the statutory basis for her detention because the Petition generally lacks any argument to support such a challenge. *See* ECF No. 1 ¶ 20. But, regardless, the Court should dismiss the Petition.

Under the Immigration and Nationality Act (INA) this Court lacks jurisdiction to review DHS's decision to detain Petitioner under § 1225 rather than § 1226. And even if the Court had jurisdiction, it should deny Petitioner's requests for relief. Petitioner is properly detained under § 1225(b)(2)(A) because she is an alien present in the United States who has not been admitted, and aliens detained under § 1225(b)(2)(A) are subject to mandatory detention and not entitled to bond hearings.

BACKGROUND

I. Legal background

In the INA, Congress established rules governing when certain noncitizens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission." Section 1225 defines an "applicant for admission" as any "alien present in the United States who has not been admitted *or* who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States *after inspection and authorization* by an immigration officer." *Id.* § 1101(a)(13)(A) (emphasis added). Per 8 U.S.C. § 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible. So an applicant for admission is a noncitizen who is (1) arriving in the United States or (2) present in the

United States who did not lawfully enter the country after inspection.

Section 1225(b)(1) describes two categories of applicants for admission, which together describe some—but not all—of those applicants. The first category includes those noncitizens who are arriving and are inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[1] *Id.* § 1225(b)(1)(A)(i). The second category includes those noncitizens who, in addition to being inadmissible under § 1182(a)(6)(c) or (a)(7), have "not been admitted or paroled into the United States," and have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] have been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* § 1225(b)(1)(A)(i), (iii)(II). Noncitizens within the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and "shall be detained" until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).

But those two categories do not encompass all applicants for admission. Section 1225(b)(2) serves as a catchall for all remaining applicants for admission who are not described in § 1225(b)(1). Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" "shall be detained for" removal proceedings under 8 U.S.C. § 1229a. Section 1225(b)(2)(A) thus generally provides for detention, during removal proceedings, for noncitizens who are applicants for admission but who do not fall within one of the two

[1] Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

categories described in § 1225(b)(1) (*i.e.*, arriving noncitizens, or other noncitizens subject to expedited removal), and are not clearly entitled to be admitted. Section 1225 does not provide a bond hearing for noncitizens detained under that provision.

For noncitizens who fall outside the categories identified in § 1225 (e.g., a noncitizen who was lawfully admitted, and then later determined to be subject to removal), another provision—§ 1226—provides procedures for detention and removal. Unlike § 1225, § 1226 is not limited to applicants for admission but broadly applies to all noncitizens facing removal.

The procedures provided in § 1226 for detention and removal of noncitizens are different from those provided under § 1225. Section 1226(a) provides that if the Attorney General issues a warrant, a noncitizen may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." Following arrest, the noncitizen may remain detained or may be released on bond or conditional parole. By regulation, immigration officers can release such a noncitizen if they demonstrate that they "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If not released by an immigration officer, the noncitizen can request a custody redetermination by an immigration judge (IJ) at any time before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.[2]

[2] Section 1226(c) also requires the Attorney General to take into custody certain defined categories of "criminal aliens" when they are released from other forms of custody (or upon DHS's own initiative), and to detain them during their removal proceedings. 8 U.S.C. § 1226(c). These individuals are generally not entitled to bond hearings.

II. Factual background

As explained below, Petitioner has not been inspected and admitted to the United States and thus is an applicant for admission.

Petitioner is a native and citizen of Guatemala who entered the United States in on an unknown date and location. Ex. 1, Decl. of Charles Ables ¶¶ 4-5. She has never been admitted or paroled into the United States. *Id.* ¶ 6-7. Petitioner has several criminal convictions in the United States including for Driving While Intoxicated, Resisting Arrest and False Information, and Burglary of Vehicles. *Id.* ¶ 8. Petitioner also has a pending Burglary charge in Texas. *Id.* ¶¶ 9, 32.

In July 2024, while Petitioner was in the custody of Harris County, Texas, based on a burglary charge, Immigration and Customs Enforcement ("ICE") determined that Petitioner had entered the country illegally and issued an immigration detainer. *Id.* ¶ 9. On July 12, 2024, ICE took custody of Petitioner pursuant to 8 U.S.C. § 1226. *Id.* ¶ 10. On the same date, ICE issued a Notice to Appear ("NTA") initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 11. The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* On August 8, 2024, Petitioner appeared before the IJ and admitted the allegations and charge in the NTA. *Id.* ¶ 13. On September 4, 2024, Petitioner appeared before the IJ and filed an application for relief from removal. *Id.* ¶ 14.

On January 3, 2025, at Petitioner's request, the IJ held a custody redetermination hearing for Petitioner and denied Petitioner's request for a bond finding that Petitioner failed to meet her burden to show that she is not a danger to the community or a flight

risk. *Id.* ¶ 21. Petitioner did not appeal the IJ's decision. *Id.*

On April 8, 2025, Petitioner appeared before the IJ for an individual hearing on her application for relief. *Id.* ¶ 24. The IJ denied relief and ordered Petitioner removed. Petitioner appealed the IJ's decision, and the BIA remanded the case back to the IJ for further proceedings and entry of a new decision. *Id.* ¶¶ 24, 28. In September 2025, in accordance with the BIA decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), ICE began detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A). *See id.* ¶ 31. On October 16, 2025, Petitioner appeared before the IJ and requested additional time to hire an attorney and gather evidence. *Id.* ¶ 29. The IJ granted her request and scheduled the matter for a hearing on October 30, 2025. *Id.* ¶ 29.

III. Procedural background

On September 25, 2025, Petitioner filed the Petition, which challenges her detention as violating due process.[3] *See generally id.* Petitioner appears to imply that she should not be detained subject to § 1225 (which provides for mandatory detention) but instead subject to § 1226 (which provides for the possibility of release on bond). *See id.* ¶ 20. Additionally, she argues that due process mandates that she receive another bond hearing because her previous bond hearing was constitutionally inadequate and, in any event, she has now been detained so long that a second hearing is constitutionally required. *Id.* ¶¶ 56-99. She seeks a bond hearing within seven days where the government bears the burden of proof and an order enjoining Respondents from

[3] Many of the allegations in the Petition focus on the conditions of Petitioner's confinement. To be clear, any claim based on conditions of confinement is not cognizable in habeas. *See, e.g.*, *Rael v. Williams*, 223 F.3d 1153, 1154 (10th Cir. 2000)).”

transferring her pending resolution of this case. *Id.* at 33-34.

ARGUMENT

I. Petitioner does not substantively address the issue of the proper statutory basis for detention.

It is unclear whether Petitioner contests that she is properly detained under § 1225. Only one paragraph and an accompanying footnote in the Petition touch on the proper statutory basis for Petitioner's detention. *See* ECF No. 1 ¶ 20 & n.1. The Petition does not substantively address Respondents' position that Petitioner is detained under § 1225, or discuss the statutory text on which that position is based. Rather, the Petition simply assumes that Petitioner's detention is pursuant to § 1226(a), citing cases arising under that provision and premising the requested relief on this assumption. The Petition thus does not meaningfully address the statutory basis for Petitioner's detention. *See Thompson R2-J Sch. Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143, 1148 n.3 (10th Cir. 2008) (arguments that are "inadequately developed to be meaningfully addressed" are "deemed waived").

Despite the lack of supporting argument, it appears that Petitioner may be challenging the statutory basis for her detention because most of the Petition rests on case law relating to § 1226 detentions and bond hearings. *See id.* at 18-31. But any such challenge should be rejected for at least two reasons. First, to the extent Petitioner is making such an argument, the Court lacks jurisdiction to hear it. Second, Petitioner is properly detained under § 1225(b)(2), which mandates detention and does not permit release on bond.

II. The Court lacks jurisdiction to hear a challenge to the statutory basis for Petitioner's detention.

Congress has provided noncitizens like Petitioner with a vehicle to challenge the statutory provision that ICE relies on for detention and removal—in immigration proceedings and then in the court of appeals. Specifically, Congress provided, in the INA, that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review. 8 U.S.C. § 1252(a)(5). Congress also—in § 1252(b)(9)—deprived district courts of jurisdiction to hear such a challenge.

Review of a final order includes review of "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States." *Id.* § 1252(b)(9); *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 230–31 (2020) (explaining that § 1252(b)(9) "makes clear that Congress understood the statutory term 'questions of law and fact' to include the application of law to facts"). The decision to detain Petitioner under § 1225 is a question of law arising from her removal proceedings. Indeed, Petitioner may raise this question with the IJ in a custody redetermination hearing. *See generally* 8 C.F.R. § 1003.19. This issue should thus be reviewed by the appropriate court of appeals as part of an appeal of a final order of removal, and Petitioner has not shown an inability to present this challenge in that manner.[4]

[4] A court in this district recently held that it has jurisdiction to hear a habeas challenge to § 1225(b)(2) detention. *See Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880, at *1-2 (D. Colo. Sept. 16, 2025). In doing so, the Court relied primarily on an opinion of the Tenth Circuit. *See id.* at *2 (citing *Mukantagara v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113 (10th Cir. 2023)). But the Tenth Circuit's ruling in *Mukantagara* does

III. Even if the Court had jurisdiction, Petitioner's statutory challenge fails.

The plain text of § 1225(b)(2)(A) makes clear that Petitioner falls within its scope. Section 1225(b)(2)(A) mandates detention for a noncitizen "who is an applicant for admission" if they are "not clearly and beyond a doubt entitled to be admitted." The statute defines "[a]pplicant for admission" to include noncitizens who (1) are "present in the United States who ha[ve] not been admitted" or (2) "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Section 1225 thus makes clear that "applicants for admission" includes *both* those just arriving in the United States *and* those who entered without inspection and have been residing here.

Additionally, § 1225(b)(2) is broader than § 1225(b)(1). Section 1225(b)(2) is titled "Inspection of other aliens." The "other aliens" in the title refers to a category of noncitizens that is not covered by § 1225(b)(1). The Supreme Court has expressly recognized that § 1225(b)(2) refers to a "broader" category of noncitizens than those described in § 1225(b)(1). In *Jennings v. Rodriguez*, the Court recognized that § 1225(b)(2) is a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." 583 U.S. at 287 (emphasis added). The Court in *Jennings* confirmed that all noncitizens who are "applicants for admission" are "seeking admission" by virtue of

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not show that district courts have jurisdiction to review a decision by ICE about the statutory provision that applies to the noncitizen and permits removal and detention. That case did not involve removal proceedings (to which Section 1252(b)(9) applies); rather, it was addressing the decision of U.S. Citizenship and Immigration Services (USCIS) to terminate a noncitizen's refugee status, which, the court expressly held, did *not* arise from an "action taken. . . to remove an alien from the United States." *Mukantagara*, 67 F.4th at 1115-16 (citation omitted). Here, however, the case *does* arise from such an action, because Petitioner is being detained for a removal proceeding.

that status. The Court explained that the "law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289 (emphasis added). But § 1225(b)(1) contains no such "seeking admission" language. Its detention provision applies, in the Attorney General's discretion, even to some noncitizens who are not "arriving" at the time of their inspection by an immigration officer. *See* § 1225(b)(1)(A)(i) (applying to an "alien . . . who is arriving in the United States *or* is described in clause (iii)" (emphasis added); *id.* § 1226(b)(1)(A)(iii) (describing a noncitizen "who has not affirmatively shown" that they have "been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility"). Accordingly, § 1225(b)(2) applies *both* to applicants for admission just arriving at the border who do not fall within Section 1225(b)(1)(A)(i) *and* to applicants for admission who have been physically present in the United States but are not covered by § 1225(b)(1)(A)(iii)(II). In short, a noncitizen who is present in the United States but has not been inspected or admitted, like Petitioner here, is treated as an applicant for admission.

This reading of Section 1225 comports with the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). *See Chavez v. Noem*, No. 25-cv-02325-CAB-SBC, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025). Before the IIRIRA, "an 'anomaly' existed 'whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.'" *Id.* (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). The addition of § 1225(a)(1) "ensure[d] that all immigrants who have not been lawfully

admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission." *Torres*, 976 F.3d at 928. A statutory interpretation that would allow applicants for admission to circumvent mandatory detention by evading immigration officers when the applicants enter the country would enshrine in our law "a perverse incentive to enter at an unlawful rather than a lawful location." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Respondent's interpretation avoids that outcome.

Petitioner is an "applicant for admission." She is present in the United States, and she has not been "admitted" (*i.e.*, she has not made a "lawful entry. . . after inspection and authorization by an immigration officer"). 8 U.S.C. § 1101(a)(13)(A); Ex. 1 ¶¶ 5-7. She does not argue that she is clearly and beyond a doubt entitled to be admitted. Thus, she falls within the scope of Section 1225(b)(2)(A).

IV. Petitioner is not entitled to another bond hearing.

Petitioner claims that she is entitled to another bond hearing as a matter of due process. She argues that the bond hearing she received was constitutionally inadequate and that, in any event, she has now been detained for so long that due process requires a second bond hearing.[5] She is incorrect.

The Supreme Court has explained that "more than a century of precedent" supports the "important rule" that for noncitizens who have not "been admitted into the

[5] Petitioner previously received a bond hearing at her request when she was detained pursuant to § 1226. Ex. A ¶¶ 10, 18, 21. However, ICE subsequently determined that Petitioner is properly detained pursuant to § 1225(b), under which detention is mandatory. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

country pursuant to law," the procedure authorized by Congress is sufficient due process. *Thuraissigiam*, 591 U.S. at 138; *see also Demore v. United States*, 538 U.S. 510, 522 (2003) (noting that the Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to [U.S.] citizens."). Relatedly, this Court has explained in analyzing a due process challenge to immigration detention, "so long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the merits determinations that are keeping them in custody, continued custody is permissible." *Bonilla Espinoza v. Ceja*, Civil Action No. 25-cv-01120-GPG (D. Colo. May 21, 2025), ECF No. 11 at 13 (holding that "caselaw from the Supreme Court, Tenth Circuit, and other district courts within the Tenth Circuit compels the Court to conclude that Petitioner, as an applicant for admission, is entitled to only the process Congress has conferred on him by statute. . . . As the Supreme Court has held, § 1225(b) . . . does not create a statutory right to a bond hearing."); *see also Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where a noncitizen failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim").

In *Demore*, the Supreme Court explained that aliens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. 538 U.S. at 513. Under the statutory provision at issue there, like the one at issue in this case, Congress mandated detention pending removal proceedings. *See id.*; 8 U.S.C. § 1226(c). The *Demore* Court reasoned that the "definite termination point" of the detention at the

end of removal proceedings assuaged any constitutional concern. *See Demore*, 538 U.S. at 529-31.

The same principle applies here: Petitioner here is detained under § 1225(b)(2), which does not create a statutory right for a bond hearing. DHS has followed § 1225(b)(2)'s instruction to detain her "for a [removal] proceeding under section 1229a," and Petitioner has not shown that she lacks an opportunity to challenge in immigration proceedings the merits of whether she falls within the scope of Section 1225(b)(2). She has therefore failed to demonstrate that the Fifth Amendment requires any additional process be provided to her.[6]

V. Even if the Court orders a bond hearing, it should not order that the government bear the burden of proof.

As discussed above, Petitioner has received all constitutionally required due process. But even if the Court were to find otherwise, it should not grant her the relief she seeks—a bond hearing at which the government bears the burden of proof.

The Supreme Court has a "longstanding view that the Government may constitutionally detain deportable aliens during the limited time necessary for their removal proceedings." *Demore*, 538 U.S. at 526. This rests, in part, on the fact that "[t]he Government has a compelling interest in ensuring that removable aliens appear for their scheduled removal proceedings and are, in fact, removed." *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211, at *9 (D. Colo. Jul. 2, 2019) (citing *Zadvydas*, 533

[6] Petitioner also argues that the Court should apply a balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976) to assess the process due here. *See* ECF No. 1 ¶¶ 59-80. Given the Supreme Court's analysis in *Demore* of a closely analogous context, *Mathews* does not supply the correct standard here.

U.S. at 690). This compelling interest weighs heavily in favor of placing the burden of proof on the noncitizen in bond hearings. *Cf. Nelson v. Colorado*, 581 U.S. 128, 138 (2017) (finding no legitimate state interest in overturning a requirement for petitioners to bear the burden of proof against the government). The government should be granted flexibility in establishing the procedural rules for bond hearings particularly where, as here, "any policy toward aliens is vitally and intricately interwoven with contemporaneous polices in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Basri v. Barr*, 469 F. Supp. 3d 1063, 1072 (D. Colo. 2020) (quotations omitted) (quoting *Demore*, 538 U.S. at 522).

Supreme Court precedent supports the constitutionality of imposing the burden of proof in bond hearings on noncitizens. The Supreme Court has never ruled that shifting the burden of proof to a noncitizen in bond proceedings violates due process. In fact, it has repeatedly suggested otherwise. *Demore* is particularly instructive because the Court rejected a due-process challenge to § 1226(c), which, like § 1225(b)(2), does not provide for any bond hearing. *See* 538 U.S. at 531. Additionally, in *Carlson*, the Court rejected a due-process challenge by noncitizens detained pending removal proceedings under the predecessor to § 1226(a), reasoning that Congress intended the government's discretionary detention decisions to be treated as "presumptively correct and unassailable except for abuse." 342 U.S. 524, 540 (1952). Even in *Zadvydas*—the only case in which the Supreme Court has implied a due-process right to a bond hearing for an immigration detainee—the Court still placed the burden on the noncitizen to show "that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701.

Furthermore, the Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings notwithstanding that the government has never borne the burden to justify that detention by clear-and-convincing evidence. *See Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson*, 342 U.S at 538; *Zadvydas*, 533 U.S. at 701.

More recently, in *Jennings*, the Supreme Court concluded that requiring the government to bear the burden of proof at bond hearings under 8 U.S.C. § 1226(a) is "clearly contrary" to the text of that statute. 583 U.S. at 306; *see also Nielson v. Preap*, 586 U.S. 392, 397-98 (2019) (a § 1226(a) detainee "may secure his release *if he can convince* the officer or [IJ] that he poses no flight risk and no danger to the community" (emphasis added)). [7]

In short, neither the INA nor Supreme Court precedent support finding a due-process problem in allocating the burden of proof in a bond hearing to the noncitizen. The government should, therefore, not bear the burden of proof in any bond hearing.

CONCLUSION

For the reasons discussed above, the Court should dismiss or deny the Petition.

[7] Petitioner relies on *L.G. v. Choate* to argue that the government should bear the burden of proof at a bond hearing. *See* ECF No. 1 at 24-25 (citing *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1179 (D. Colo. 2024)). But the *L.G.* court based its decision on Supreme Court precedent regarding civil detention for United States citizens, while largely ignoring Supreme Court precedent regarding civil detention of non-citizens. *See L.G.*, 744 F. Supp. 3d at 1186. Respondents respectfully disagree with the *L.G.* Court's conclusion. As discussed above, "[t]he Supreme Court has been clear and consistent that the Constitution requires lesser procedural protections for aliens subject to removal." *Basri*, 469 F. Supp. 3d at 1074 (declining to place burden on the government in pre-removal bond proceedings); *see also Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1197 (D. Colo. 2024) (same); *de Zarate v. Choate*, No. 23-cv-00571-PAB, 2023 WL 2574370, at *5 (D. Colo. Mar. 20, 2023) (same).

Dated: October 17, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 17, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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Attorney for Petitioner

s/ Logan P. Brown
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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03017-GPG-TPO

KHRISTYNE BATZ BARRENO,

Petitioner,

v.

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

Respondents.

DECLARATION OF CHARLES ABLES

I, Charles Ables, pursuant to 28 U.S.C. § 1746, and based on my personal knowledge and information made known to me from official records reasonably relied upon by me in the course of my employment, hereby declare as follows relating to the above-captioned matter:

1. I am employed as a Deportation Officer for the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations Denver Field Office ("Denver ERO"). My duty

station is at the ICE contract detention facility in Aurora, Colorado ("Denver CDF"). I am the Deportation Officer assigned to the case of Khristyne (Fredy) Batz Barreno, A249005167.

2. I provide this declaration based on my personal knowledge, review of the case file, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business.

3. I have reviewed the case of Khristyne (Fredy) Batz Barreno ("Petitioner")[1], who is in ICE custody at the Denver CDF.

4. Petitioner is a native and citizen of Guatemala.

5. Petitioner illegally entered the United States on an unknown date and at an unknown location.

6. Petitioner was not admitted to the United States.

7. Petitioner was not paroled into the United States.

8. Petitioner has several criminal convictions[2] in the United States:

i. August 2020: convicted of Driving While Intoxicated and sentenced to one day in jail.

ii. March 2022: convicted of Resisting Arrest and False Information. She was sentenced to 28 days in jail.

iii. May 2024: convicted of Burglary of Vehicles and sentenced to 27

[1] Petitioner identifies as a transgender woman and uses feminine pronouns.
[2] All convictions occurred in the State of Texas.

days in jail.

9. In July 2024, ICE received information that Petitioner was in custody at the Harris County, Texas jail after being arrested for Burglary. ICE determined that Petitioner had illegally entered the United States and issued an immigration detainer.

10. On July 12, 2024, ICE took custody of Petitioner after she bonded out of jail. ICE initially detained Petitioner pursuant to 8 U.S.C. § 1226 and issued a Form I-286, Notice of Custody Detention, which Petitioner refused to sign. At that time, ICE housed Petitioner at the Montgomery Processing Center in Conroe, Texas.

11. On the same date, ICE issued a Notice to Appear ("NTA"), initiating removal proceedings under 8 U.S.C. § 1229a, before the Executive Office for Immigration Review ("EOIR"). The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated).

12. On July 23, 2024, Petitioner appeared before the Immigration Judge ("IJ") at the Conroe Immigration Court for her initial hearing in removal proceedings. The IJ advised Petitioner of her rights and responsibilities in removal proceedings. Petitioner requested additional time to hire an attorney. The IJ granted her request.

13. On August 8, 2024, Petitioner appeared before the IJ and admitted the allegations and charge in the NTA.

14. On September 4, 2024, Petitioner appeared before the IJ and filed an application for relief from removal. The IJ scheduled the case for an individual hearing

on the merits of Petitioner's application for October 16, 2025.

15. On September 6, 2024, ICE transferred Petitioner from the Montgomery Processing Center to the Denver CDF.

16. On October 15, 2024, ICE filed a motion for change of venue from the Conroe Immigration Court to the Aurora Immigration Court.

17. On October 16, 2024, the IJ granted the motion for change of venue.

18. On December 11, 2024, Petitioner appeared before the IJ for a master calendar hearing. At that time, the IJ rescheduled Petitioner's case for December 17, 2024, for a competency hearing. Petitioner also requested a custody redetermination hearing. The IJ advised that a bond hearing could not be held before he held a competency hearing.

19. On December 17, 2024, Petitioner appeared before the IJ, but no hearing was held due to a lack of an interpreter.

20. On December 19, 2024, Petitioner appeared before the IJ for a competency hearing. The IJ determined Petitioner is competent to proceed and scheduled the case for a master calendar hearing on January 30, 2025.

21. On January 3, 2025, the IJ held a custody redetermination hearing in Petitioner's case. The IJ denied Petitioner's request for a bond based on a finding that Petitioner failed to meet her burden to show she is not a danger to the community or flight risk. Petitioner did not appeal the IJ's decision.

22. On January 30, 2025, Petitioner appeared before the IJ for a master calendar hearing. At that time, the IJ scheduled Petitioner's case for an individual

hearing on April 8, 2025.

23. On April 3, 2025, Petitioner filed a motion to continue the upcoming individual hearing. The IJ denied the motion to continue.

24. On April 8, 2025, Petitioner appeared before the IJ for an individual hearing on her application for relief. The IJ denied relief and ordered Petitioner removed from the United States to Guatemala. Petitioner reserved appeal.

25. On May 8, 2025, Petitioner filed a notice of appeal with the Board of Immigration Appeals ("BIA").

26. On May 28, 2025, the BIA issued a briefing schedule with a deadline of June 18, 2025, for both DHS and the Petitioner.

27. On June 6, 2025, Petitioner filed a briefing extension request with the BIA. The BIA granted the request and set a new deadline of July 9, 2025.

28. On September 19, 2025, the BIA remanded the case back to the IJ for further proceedings and entry of a new decision.

29. On October 16, 2025, Petitioner appeared before the IJ for a hearing in removal proceedings. Petitioner requested additional time to hire an attorney and gather evidence. The IJ granted her request and scheduled the matter for a hearing on October 30, 2025.

30. Petitioner's removal proceedings remain pending before EOIR.

31. ICE has cancelled the Form I-286 and detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A).

32. Petitioner's Burglary charge is pending in Harris County, Texas, and there

is a warrant for her arrest on that charge.

Executed this 17th day of October 2025.

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Deportation Officer
U.S. Immigration and Customs Enforcement