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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

EARLIN ORANDE AHINSHA RICHARDS,

Petitioner,

v.

JOHNNY CHOATE,
in his official capacity as warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.;

JAMISON MATUSZEWSKI,
In his official capacity as Interim Field Office Director, Denver, U.S. Immigration & Customs Enforcement;

KRISTI NOEM,
in her official capacity as Secretary, U.S. Department of Homeland Security;

TODD M. LYONS,
in his official capacity as Acting Director of Immigration & Customs Enforcement (ICE); and

PAMELA BONDI,
in her official capacity as Attorney General, U.S. Department of Justice.

Respondents.

Case No. 25-cv-3134

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

INTRODUCTION

1. The Petitioner, Earlin Richards ("Mr. Richards"), entered the United States legally as a Lawful Permanent Resident in 1988. He is married to a U.S. citizen, has a U.S. citizen mother and father, and has three U.S. citizen children.
2. The Department of Homeland Security ("DHS") has detained Mr. Richards since March 10, 2025, and he is presently located at the Aurora Contract Detention Facility[1] ("Aurora facility") located in Aurora, Colorado. As of this writing, DHS has detained Mr. Richards for 210 days, with no timeline for release, and his prolonged deprivation of liberty is not justified. *See* Ex. A. Absent intervention from this Court, his detention—which remains unreviewed by a neutral adjudicator—will continue indefinitely.
3. Through this petition, Mr. Richards challenges his continued detention without individualized review as violative of the Due Process Clause of the Fifth Amendment because it is unreasonably prolonged.
4. Accordingly, Mr. Richards seeks a writ of habeas corpus ordering his release unless he immediately receives a bond hearing before an Immigration Judge ("IJ") at which DHS bears the burden of justifying his continued detention by clear and convincing evidence and where the IJ, *inter alia*, considers his ability to pay any bond amount and alternatives to detention.

[1] The Aurora facility is also referred to as the Denver Contract Detention Facility. These names are used interchangeably by DHS, and both refer to the facility located a 3130 N. Oakland Street, Aurora, Colorado, 80010.

PARTIES

5. Mr. Richards entered the United States as a lawful permanent resident in 1988. He is incarcerated by Immigration and Customs Enforcement ("ICE"), a subagency within DHS, and has been held without bond or access to an independent review of his custody at the Aurora facility located at 3130 N. Oakland St., Aurora, CO 80010 for 210 days, as a result of a 2005 conviction for possession of a small amount of marijuana. Mr. Richards challenges Respondents' failure to provide a constitutionally adequate bond hearing as required by the Fifth Amendment.
6. Respondent Johnny Choate is the Warden of the Aurora facility, where Mr. Richards is detained. Defendant Choate is a legal custodian of Mr. Richards. He is sued in his official capacity.
7. Respondent Jamison Matuszewski is the Interim ICE Denver Acting Field Office Director. The Denver Field Office is responsible for carrying out ICE's immigration detention operations at all of Colorado's detention centers. Defendant Matuszewski is a legal custodian of Mr. Richards. He is sued in his official capacity.
8. Respondent Kristi Noem is named in her official capacity as the Secretary of DHS. In this capacity she is responsible for the administration of the immigration laws pursuant to Section 402 of the Homeland Security Act of 2002. 107 Pub. L. 296 (November 25, 2003); *see also* 8 U.S.C. § 1103(a); routinely transacts business in the District of Colorado; and is legally responsible for the pursuit of Mr. Richards's incarceration and removal. She is therefore a custodian of Mr. Richards. Respondent Noem's office is located at DHS headquarters in Washington, DC, 20528.

9. Respondent Todd M. Lyons is the Deputy Director of ICE. As the head of ICE, he is responsible for decisions related to detaining and removing certain noncitizens. Director Lyons is a legal custodian of Mr. Richards.

10. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. She is responsible for the administration of the immigration laws as exercised by EOIR, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of Colorado and is legally responsible for administering Mr. Richards's removal and bond proceedings as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Mr. Richards. Respondent Bondi's office is at DHS of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530.

JURISDICTION AND VENUE

11. Respondents incarcerated Mr. Richards on March 10, 2025, and he is under the direct control of Respondents and their agents. Ex. A.

12. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA").

13. Federal courts have subject matter jurisdiction under 28 U.S.C. § 2241(c)(1) and (c)(3) (habeas corpus) to determine whether people imprisoned in federal custody are held in violation of law. *INS v. St. Cyr*, 533 U.S. 289, 305 (2001).

14. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 28 U.S.C. § 1346 (original jurisdiction); Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the All Writs Act, 28 U.S.C. § 1651; and 28 U.S.C. §§ 2201-2202 (Declaratory Judgement Act).

15. Further, the Court has jurisdiction to grant injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, 1651, 2241, and the All Writs Act, 28 U.S.C. § 1651. Mr. Richards's detention constitutes a "severe restraint[] on his individual liberty" interest such that Mr. Richards is "subject to restraints not shared by the public generally" and "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

16. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention by DHS. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

17. Venue properly lies in the District of Colorado. 28 U.S.C. §§ 1391(b)(2), (e). This petition is filed while Mr. Richards is physically present within the district, as he is incarcerated at the Aurora facility in Aurora, CO.

18. The place of employment of Respondent Choate is at the Aurora Contract Detention Facility, located at 3130 N. Oakland Street, Aurora, CO 80010. The place of employment of Respondent Matuszewski is also located within the district, at 12445 East Caley Ave, Centennial, CO 80111. *See* 28 U.S.C. §§ 1391(b)(2) and (e); 2241(d); *Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973) (laying out venue factors).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. Exhaustion is not necessary because Congress did not codify a requirement that petitioners seeking a writ of habeas corpus exhaust administrative remedies. *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).

20. Further, exhaustion of remedies is unnecessary if futile. *Goodwin v. State of Okl.*, 923 F.2d 156, 157 (10th Cir. 1991) (finding that exhaustion is not required due to futility where the state's highest court recently decided the precise legal issue petitioner raised in his federal habeas petition).

21. Here, exhaustion would be futile because the detention statute does not provide for a bond hearing when an individual is held pursuant to 8 U.S.C. § 1226(c) and IJs lack jurisdiction to render an individualized custody determination for individuals incarcerated pursuant to that statute. 8 U.S.C. § 1226(c); *Valerga v. Holder*, No. 13-CV-03014-PAB, 2014 WL 103551, at *3 (D. Colo. Jan. 9, 2014) (determining exhaustion to be futile for persons in immigration detention whose cases are determined to be subject to mandatory detention under 8 U.S.C. § 1226(c)).

22. Further, EOIR, the agency housing the nation's immigration courts and appellate body, already decided in precedential decisions that the noncitizen must shoulder the burden by clear and convincing evidence to show they may be released on bond. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803 (BIA 2020) (concluding that the noncitizen's "assertion that the DHS should bear the burden . . . lacks merit because we have *clearly* held that [the statute] places the burden of proof on the [noncitizen] to show that he merits release on bond") (emphasis added) (citations omitted); *Matter of Fatahi*, 26 I. & N. Dec. 791, 795 n. 3 (BIA 2016) (finding that the BIA has "consistently held that [noncitizens] have the burden to establish eligibility for bond while proceedings are pending").

23. Moreover, EOIR lacks authority to rule on the constitutionality of the immigration statutes, and both the immigration courts and BIA lack jurisdiction to interpret issues beyond the scope of the INA and its corresponding regulations. *Matter of G-K-*, 26 I. & N. Dec. 88 (BIA 2013); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on the constitutionality of an immigration statute). Requesting EOIR to review Mr. Richards's detention therefore "would be to demand a futile act." *Houghton v. Shafer*, 392 U.S. 639, 640 (1968) (finding that requiring the petitioner to exhaust administrative remedies was futile because the attorney general already decided that the rules were appropriately applied to the petitioner).

24. Even if meaningful administrative remedies were promptly available, Mr. Richards, as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust those remedies under 8 U.S.C. § 2241. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010).

25. No administrative mechanisms exist through which Mr. Richards can seek a neutral review of whether his ongoing and prolonged detention is justified. Further exhaustion is not required.

26. Therefore, exhaustion is satisfied because: (a) Congress did not require exhaustion under the circumstances; and (b) the pursuit of administrative remedies is futile.

BACKGROUND OF RELEVANT STATUTES AND POLICY

27. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *Demore*, 538 U.S. at 515–16; *Zadvydas*, 533 U.S. at 690. Detention is either discretionary, 8 U.S.C. § 1226(a), or mandatory, §§ 1225(b), 1226(c), 1231(a).

28. Under the discretionary detention statute, noncitizens may request a bond hearing at any time to contest whether they are a danger or a flight risk and thus properly detained during the pendency of their removal proceedings. 8 U.S.C. § 1226(a).

29. Conversely, "mandatory" detention pursuant to section 1226(c) authorizes DHS to detain noncitizens in removal proceedings that have been convicted of certain crimes.

STATEMENT OF FACTS

30. Mr. Richards entered the United States legally in 1988. He is the father of three U.S. citizen children, is married to a U.S. citizen, and his mother and father are also U.S citizens.

31. On May 16, 2025, an Immigration Judge ordered Mr. Richards removed from the United States. Mr. Richards' appeal to the Board of Immigration Appeals remains pending. *See* Ex. B.

32. Respondents have now incarcerated Mr. Richards for close to seven months of his life as a result of a conviction for possession of marijuana without ever being required to demonstrate before a neutral adjudicator that his ongoing detention is necessary to prevent flight or danger to the community. This Petition follows.

LEGAL BACKGROUND

33. Respondents are subjecting Mr. Richards to prolonged detention without an individualized bond hearing based on an unconstitutional application of the mandatory detention scheme, 8 U.S.C. § 1226(c). ICE detained Mr. Richards 210 days ago and a neutral arbiter has not meaningfully reviewed that custody determination. Mr. Richards merits a constitutionally adequate bond hearing given neither release nor removal are reasonably foreseeable.

A. Due Process Requires Neutral Review of Liberty Determinations.

34. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental protection applies to all persons present in the United States, including both removable and inadmissible noncitizens. *Id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious."). Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [incarcerated] individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal citation omitted). Civil immigration detention is therefore constitutional only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Id.* at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court identified those limited circumstances as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; *see also Demore*, 538 U.S. at 515, 527–28.

35. The Supreme Court has repeatedly recognized that civil detention must be carefully limited to avoid due process concerns and ensure the government's justifications for continued detention are legitimate. *E.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (upholding involuntary civil commitment of certain sex offenders but requiring "strict procedural safeguards" including a right to a jury trial and proof beyond a reasonable doubt); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both

particularly important and more substantial than mere loss of money.") (citation and quotation marks omitted); *Foucha v. Louisiana*, 504 U.S. 71, 80–83 (1992) (striking civil detention statute because it placed the burden on the person in custody to prove eligibility for release); *Addington v. Texas*, 441 U.S. 418, 423 (1979) (state must justify civil detention of allegedly dangerous individual with mental illness by clear and convincing evidence). *See also U.S. v. Salerno*, 481 U.S. 739, 750–52 (1987) (upholding federal bail statute permitting pretrial detention where statute required strict procedural protections, including prompt hearings where government bore the burden of proving dangerousness by clear and convincing evidence). It is of no consequence that these precedents are unrelated to immigration detention because "the 'constitutionally protected liberty interest' in avoiding physical confinement, even for [noncitizens] already ordered removed, [is not] conceptually different from the liberty interests of citizens considered in *Jackson*, *Salerno*, *Foucha*, and *Hendricks*." *Velasco Lopez v. Decker*, 978 F.3d 842, 856 (2d Cir. 2020) (*quoting Demore,* 538 U.S. at 553 (Souter, J., concurring in part and dissenting in part)).

B. Reasonableness of Continued Detention Requires Judicial Scrutiny.

36. While the Supreme Court upheld the constitutionality of the mandatory detention scheme under § 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's flawed understanding that detention under § 1226(c) is typically "brief" and lasts a "very limited time." *Demore*, 538 U.S. at 513, 529 & n.12. The Court cited government-provided data that purported to show that "in the majority of cases [detention under § 1226(c)] lasts for less than the 90 days we considered presumptively valid in *Zadvydas*," and that "in the minority of cases in which the [noncitizen] chooses to appeal,"

detention lasts "about five months." *Id.* at 529–30. However, those statistics were inaccurate even when the Supreme Court decided *Demore*.[2]

37. Nevertheless, once detention extends beyond the limited timeframe authorized by *Demore*, immigrants must be afforded procedural protections. *See Demore*, 538 U.S. at 532 (Kennedy, J., concurring) ("individualized determinations as to [] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"). *See also Hutto v. Finney*, 437 U.S. 678, 685–86 (1978) ("the length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards"); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention beyond a "reasonable period of time" requires additional process or release); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972) ("lesser safeguards may be appropriate" only if "duration of the confinement [is] strictly limited").

38. Following *Zadvydas* and *Demore*, federal circuit courts to consider the issue of an immigrant's prolonged detention have found that Fifth Amendment due process imposes a temporal limitation on mandatory detention—either pursuant to the Due Process Clause itself, or to avoid serious constitutional concerns. *See Black v. Decker*, 103 F.4th 133, 145 (2d Cir. 2024) ("[W]e nonetheless read *Zadvydas, Demmore,* [and] *Jennings* . . . to suggest strongly that due process places *some* limits on detention under section 1226(c) without a bond hearing.") (emphasis in original); *German Santos v. Warden Pike Cty. Corr. Fac.*,

[2] The Solicitor General in 2016 revealed that the statistical information provided by the government and relied upon by the Supreme Court in *Demore* was inaccurate, and the true average length of immigration detention was shown to be much longer. *See Jennings*, 583 U.S. at 343 (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.").

965 F.3d 203, 209 (3d Cir. 2020) (holding that at a certain point, "due process requires the Government to justify continued detention at a bond hearing" for a petitioner detained under § 1226(c)) (internal citations and quotations omitted); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (expressing "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's deprivation of liberty would have thought so").

39. The Constitution requires scrutiny of an individual's detention when it becomes prolonged. *See Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months"); *Demore*, 538 U.S. at 529–30; *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion) (limiting imposable sentence to six months for a criminal offense without procedural protection of a jury trial); *McNeil*, 407 U.S. at 249, 250–52 (recognizing six months as outer limit for confinement without individualized inquiry for civil commitment); *Velasco Lopez*, 978 F.3d at 855 n. 13 (acknowledging that the Supreme Court in *Zadvydas* "held that . . . a presumptively constitutional period of detention does not exceed six months").

40. Courts in this District adopt an individualized test to consider whether the length of detention is unconstitutionally prolonged, reviewing factors such as whether detention is reasonably related to the statute's purpose, the existence of government-caused delay, and the use of dilatory tactics by a noncitizen as opposed to good-faith challenges to removal. *See, e.g.*, *Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1193 (D. Colo. 2024); *de Zarate v. Choate*, No. 23-cv-00571 (PAB), 2023 WL 2574370, at *3-*4 (D. Colo. March 20, 2023); *Daley v. Choate,* No. 22-cv-03043 (RM), 2023 WL 2336052, *2-*4 (D. Colo. Jan. 6, 2023);

Sheikh v. Choate, No. 22-CV-01627 (RMR), 2022 WL 17075894, at *6 (D. Colo. July 27, 2022); *Singh v. Garland*, No. 21-CV-00715 (CMA), 2021 WL 2290712, at *4 (D. Colo. June 4, 2021); *Villaescusa-Rios v. Choate*, No. 20-CV-03187 (CMA), 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021); *Singh v. Choate*, No. 19-CV-00909 (KLM), 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019). This six-factor test analyzes whether a noncitizen's detention has become unconstitutionally prolonged and examines:

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

Sheikh, 2022 WL 17075894, at *6; *Singh*, 2021 WL 2290172, at *4; *Villaescusa-Rios*, 2021 WL 269766, at *3; *Singh*, 2019 WL 3943960, at *5.

C. Due Process Requires a Bond Hearing with the Imposition of a Heightened Standard of Proof on the Government, and Consideration of Alternatives to Detention and Ability to Pay.

41. Once a noncitizen's detention is deemed unreasonably prolonged and therefore unconstitutional without neutral review, a subsequent bond hearing must include safeguards and meet certain standards for it to provide meaningful due process. Specifically, DHS must demonstrate by clear and convincing evidence that an individual presents an unjustifiable risk of flight or danger to the community to continue detention beyond six-months. *See Velasco Lopez*, 978 F.3d at 855–56 (finding that DHS must bear the burden by clear and convincing evidence at immigration bond hearings, noting that "shifting the burden of proof to the Government to justify continued detention promotes the Government's interest—one we believe to be paramount—in minimizing the enormous

impact of incarceration in cases where it serves no purpose"); *Sheikh*, 2022 WL 17075894 at *11; *Singh*, 2019 WL 3943960, at *7 (same).

42. The Supreme Court has held that the burden to determine the legality of preventative detention should be squarely on the government as it is improper to ask an individual to "share equally with society the risk of error" where the individual's liberty interest is of "such weight and gravity." *Addington*, 441 U.S. at 427. The individual's liberty interest is strong even at the moment of detention, *Velasco Lopez*, 978 F.3d at 851, and even though "the Government's interests *may* [] initially outweigh short-term deprivation of [a noncitizen's] liberty interests, *that balance shifts* once [] imprisonment [becomes] unduly prolonged," *id.* at 855 (emphasis added). At that point, "the Government [must] justify its continuation." *Id.* Therefore, given the gravity of deprivation when the government preventively detains individuals, due process requires the jailers to establish the necessity of detention. *See e.g., Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where the burden of proof is on the government); *Foucha*, 504 U.S. at 81–82, 86 (holding unconstitutional a state civil insanity detention "statute that place[d] the burden on the [person in detention] to prove that he is not dangerous").

43. Further, due process requires that an IJ consider an individual's ability to pay a bond and alternative conditions of release when setting a bond. *Salerno*, 481 U.S. at 754 ("bail must be set by a court at a sum designed to [prevent flight] and no more") (citation omitted); *Hernandez v. Garland,* No. EDCV 16-620 JGB (KKx), 2022 WL 1176752 (C.D. Cal. Mar. 28, 2022) (settlement agreement delineating that DHS must consider financial circumstances and ability to pay bond); *Hernandez v. Sessions*, 872 F.3d 976, 991 & n.4 (9th Cir. 2017) ("a bond determination that does not include consideration of financial

circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests"); *Sheikh*, 2022 WL 17075894 at *11–12.[3]

D. Due Process Protects Against Prolonged Detention and Respondents are Violating Mr. Richards's Constitutional Rights.

44. Mr. Richards's mandatory detention is unconstitutional because it is insufficiently related to a lawful purpose; *i.e.*, (1) to ensure the appearance of noncitizens at future hearings; and (2) to prevent danger to the community pending completion of removal. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring). Implementation of the six-factor test demonstrates that DHS's decision to play the role of judge and jailer requires an individualized review by a neutral arbiter to consider whether Mr. Richards's detention meets a lawful purpose.

45. *First*, Mr. Richards has been detained for 210 days. "The pertinent consideration is whether '[t]he length of detention has surpassed the rough six-month threshold at which detentions become less and less reasonable.'" *Arostegui-Maldonado v. Baltazar*, --- F.3d ---, 2025 WL 2280357, at *6 (D. Colo. Aug. 8, 2025) (*quoting Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497 at *6 (S.D.N.Y. Aug. 20, 2018)). Petitioner's seven months of detention (and counting) therefore weighs strongly in his favor. *See id.* ("[E]ven if the Court were to only consider the period of time that Maldonado has been consecutively detained—roughly eight months—it would still be sufficient to trigger

[3] Moreover, the Colorado legislature is committed to bail reform and in 2013, the General Assembly passed House Bill 13-1236. *See* 1 Colo. Sess. Laws 2013, ch. 202, pp. 820 et seq.; §§ 16-1-104, C.R.S. et seq. To prevent pretrial detention, the statute changed the definition of bail, allowing for monetary bail only when necessary, creating a presumption of release, and requiring courts to consider the individual circumstances presented in each case. Although wholly persuasive, this framework should similarly be adopted when assessing whether persons in DHS custody have the financial means to secure their liberty on balance with any factors indicating dangerousness or flight risk.

scrutiny."). *See also Perez*, 2018 WL 3991497, at *6 (ordering individualized bond hearing where detention lasted 9 months); *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018) (ordering individualized bond hearing where detention lasted 8 months).

46. *Second*, Mr. Richards will remain detained indefinitely because DHS continues to imprison him as the BIA considers his appeal. "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). Respondents are unable to demonstrate the likely duration of future detention, though it will likely be protracted. And if the BIA does not find in his favor, Mr. Richards intends to appeal his case to the Court of Appeals for the Third Circuit, if necessary. Furthermore, the current historic backlog of immigration appeals pending at the BIA[4] suggests that Mr. Richards's immigration matters will not be resolved in "due course." *Singh*, 2019 WL 3943960, at *6. The second factor tips also heavily in Mr. Richards's favor.

47. *Third*, DHS incarcerates Mr. Richards at the Aurora facility, and the evidence establishes poor conditions of confinement, akin to punitive settings. 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). *See King v. Cty. of Los Angeles*, 885 F.3d 548, 556–57 (9th Cir. 2018) (finding that due process requires that conditions in civil detention facilities may not be the

[4] *See* https://www.justice.gov/eoir/media/1344986/dl?inline (reflecting historic high of 186,473 appeals pending at the BIA).

same as or worse than those in a prison). That said, "whether [Mr. Richards] is detained in a luxurious hotel, a detention facility, or some other building, he is being deprived of his liberty—thus, this factor seems somewhat beside the point." *Singh*, 2019 WL 3943960, at *6. Tellingly, this Court already held that the location of similarly situated individuals weighs in a noncitizen's favor, because Aurora is akin to a penal institution. *Sheikh*, 2022 WL 17075894, at *8–9; *Singh*, 2021 WL 2290712, at *3–4; *Villaescusa-Rios*, 2021 WL 269766, at *4.

48. Respondents are on notice of the inadequate health care available at the Aurora facility yet fail to mitigate the enumerated violations of DHS's own detention standards.[5] The Aurora facility was found in violation of ICE detention standards in a June 2019 investigation conducted by the DHS Office of Inspector General.[6] The OIG report found that individuals subjected to segregation in Aurora "were not treated with the care required under ICE detention standards" and determined that the absence of outside recreation may reduce the

[5] *See* AIC 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/AILA 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/AILA 2018 Complaint, "Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility,"[5] (Jun. 4, 2018) *available at*: http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf.

[6] OIG Report, Acting Inspector General John V. Kelly, "Concerns about ICE [] Treatment [of Detained Persons] and Care at Four Detention Facilities," (Jun. 3, 2019) *available at*: https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf.

mental health and welfare of people held in the Aurora facility. *Id.* A comparison of Mr. Richards's civil incarceration to that of a penal institution weighs heavily in his favor. *See King,* 885 F.3d at 556–57.

49. *Fourth*, Mr. Richards has not engaged in any dilatory tactics and continues to diligently defend himself against removal. *See* Ex. B. He remains detained and now awaits the BIA's consideration of his case.[7]

50. Finally, Petitioner has a strong argument of winning on appeal. *See* Ex. B (arguing, among other things, that the Immigration Judge's credibility determination was made error based on the Immigration Judge's speculation). Conversely, there is no evidence of a "likelihood" that removal proceedings will result in a final order of removal.

51. Due process requires an individualized analysis of dangerousness and risk of flight, and if this Court declines to order Mr. Richards's release, at a minimum DHS must prove by clear and convincing evidence that Mr. Richards should remain detained at a bond hearing held within seven days of this Court's decision.

COUNT ONE

Application of Section 1226(c) to Mr. Richards is a Violation of the Due Process Clause of the Fifth Amendment

52. The Supreme Court never authorized a reading of 8 U.S.C. § 1226(c) that would permit DHS to detain noncitizens without bond in cases where flight risk and danger cannot be reasonably presumed. *Demore*, 538 U.S. at 533 (Kennedy, J., concurring, "If the government cannot satisfy [the minimal threshold burden of showing the relationship between detention and its purpose] then the permissibility of continued detention pending

[7] Petitioner does not allege that DHS has engaged in any dilatory tactics.

deportation proceedings turns solely upon the [noncitizen's] ability to satisfy ordinary bond procedures . . . .").

53. As applied to Mr. Richards, 8 U.S.C. § 1226(c) is unconstitutional because DHS has detained him in ICE custody for a prolonged period, 210 days; his detention will continue indefinitely absent intervention from this Court; the Aurora facility is akin to a punitive setting and has a longstanding record of providing inadequate medical care and no outdoor access; he did not cause significant delay in his immigration proceedings; and Mr. Richards has a substantial claim against deportation.

54. Mr. Richards's 210-day detention without a bond hearing before a neutral adjudicator is therefore unreasonable and violates Due Process.

PRAYER FOR RELIEF

WHEREFORE, Mr. Richards prays that this Court grant the following relief:

1) Assume jurisdiction over this matter;

2) Enjoin Respondents from transferring Mr. Richards outside of the jurisdiction of the District of Colorado pending the resolution of this case;

3) Issue a writ of habeas corpus directing Respondents to release Mr. Richards on his own recognizance or, in the alternative, provide him, within seven days of this Court's order, a constitutionally adequate, individualized bond hearing before an impartial adjudicator where: (1) DHS bears the burden of establishing by clear and convincing evidence that continued detention is justified; and (2) the adjudicator is required to meaningfully consider alternatives to imprisonment such as community-based alternatives to detention including conditional release and parole, as well as Mr. Richards's ability to pay a bond;

4) Award Mr. Richards attorney's fees and costs under the Equal Access to Justice Act ("EAJA") as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

5) Grant any other and further relief that this Court deems just and proper.

Dated: October 6, 2025

Respectfully submitted,

/s/ Michael Z. Goldman
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212 901-3799
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Attorney for Petitioner

VERIFICATION

I, /s/ Michael Z. Goldman, 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: October 6, 2025

CERTIFICATE OF SERVICE

I, Michael Z. Goldman, hereby certify that on October 6, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Michael Z. Goldman, 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 October 6, 2025.

Chief, Civil Division
U.S. Attorney's Office
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Denver, CO 80202

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Attorney General of the United States
U.S. Department of Justice
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And to: Kristi Noem and Todd M. Lyons, DHS/ICE, c/o:

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U.S. Department of Homeland Security
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And to:

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