

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

Civil Action No. 25-cv-3966

M.S. (alien registration number A xxx xxx xxx),

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the ICE Denver Contract Detention Facility,

ROBERT HAGAN, in his official capacity as Director of the Denver Field Office of United States Immigration and Customs Enforcement, Enforcement and Removal Operations,

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and

PAMELA JO BONDI, in her official capacity as Attorney General of the United States,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Introduction

1. Petitioner M.S. and his family came to the United States in August 2023. M.S.'s father had publicly expressed opposition to Russia's invasion of Ukraine and was afraid that his sons, including M.S., would be conscripted into the Russian army in retaliation for his political activities.
2. Though he had scrupulously followed the procedures the government set out for the orderly processing of those seeking asylum at the border and has no criminal history, the government detained him, his brother, and his father as soon as they presented themselves. The family was separated; M.S.'s father and brother were detained in California, while M.S. was transferred to Louisiana and then to the ICE Denver Contract Detention Facility in aurora, Colorado.
3. Nearly ten months after he was initially detained, the government placed him in removal proceedings, where he requested Asylum, Restriction on Removal (also called statutory Withholding of Removal), and Protection under the regulations implementing the Convention Against Torture. An immigration judge granted his application for Asylum in August 2024, but the Department of Homeland Security (DHS) appealed that decision to the United States Department of Justice, Executive Office for Immigration Review (EOIR), Board of Immigration Appeals (the BIA).
4. The briefing in the appeal was completed in October 2024. In January 2025, the BIA placed the case on hold so that DHS could confirm that the necessary background checks were complete. Despite efforts by M.S., his father, and two attorneys, DHS never filed the biometrics notice. M.S. remained in detention for all this time.

5. In November 2025, over two years after M.S.'s initial entry and detention, the BIA issued a decision remanding the case to the Immigration Judge for further proceedings. In the interim, M.S.'s father was granted asylum. He has now petitioned for M.S. to be granted derivative asylum status by filing a Form I-730 with the United States Citizenship and Immigration Services (USCIS). His Immigration Court proceedings have been placed on hold pending the adjudication of this petition.
6. The parties are liable to disagree about which statute authorizes M.S.'s detention. The government likely considers that he is detained pursuant to Immigration and Nationality Act (I.N.A.) § 235(b)(2)(A), which mandates the detention of applicants for admission who are not in expedited removal proceedings. Alternatively, he might be detained under either I.N.A. § 235(b)(1)(B), 8 U.S.C. § 1225(b)(1)(B), which also mandates detention, because he was placed in the credible-fear process, which likely means that an expedited order of removal was entered against him when he presented himself at the border, or under I.N.A. § 236(a)(1), 8 U.S.C. § 1226(a)(1) because the United States Citizenship and Immigration Services (USCIS) exercised its discretion to place him in full removal proceedings under I.N.A. § 240, 8 U.S.C. § 1229a. Even if he is detained under I.N.A. § 236(a)(1), 8 U.S.C. § 1226(a)(1), however, he is ineligible for a bond hearing before an immigration judge because he has been classified as an arriving alien. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). In short, whichever statutory scheme presently governs his detention, he cannot request bond from an immigration judge. His only avenue for requesting release is through a grant of parole under DHS's authority as provided for in I.N.A. § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

7. The government has no grounds to believe that M.S. presents a danger to the community. His continuous detention for over two years is therefore a violation of his due process rights under the Fifth Amendment to the United States Constitution. Thus, he petitions the Court to issue a writ of habeas corpus ordering either his immediate release or that he be provided with a bond hearing within seven days at which the government will bear the burden of proving by clear and convincing evidence that his continued detention is justified and during which his ability to pay must be considered in fixing any bond amount.

Jurisdiction and Venue

8. The court has federal question subject matter jurisdiction over this petition because it arises under the laws of the United States. *See* 28 U.S.C. § 1331. Specifically, the Court has jurisdiction to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241(a), (c)(1), (3). *See also* U.S. Const. Art. I, § 9, Cl. 2. He is in the custody of the United States government and pursuant to its authority, and his continued detention violates his Fifth-Amendment due-process rights.
9. Venue is proper in the District of Colorado insofar as all the events giving rise to this action, which does not involve any real property, occurred in Colorado and M.S. is detained at the Denver Contract Detention Facility in Aurora, Colorado. *See* 28 U.S.C. § 1391(e)(1)(B), (C).

The Parties

10. M.S. is a 22-year-old native and citizen of Russia. He and his family fled Russia to avoid retaliation for his father's publicly expressed opposition to the war in Ukraine. He is currently detained at the ICE Denver Contract Detention Facility.
11. Juan Baltazar is the warden of the ICE Denver Contract Detention Facility, which is run by the Geo Group. He oversees the facility where M.S. is physically confined. He is sued solely in his official capacity.
12. Robert Hagan is the director of the Denver Field Office of United States Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). He oversees ICE's work in Colorado and Wyoming to detain and, as necessary, remove noncitizens suspected of violating the Immigration Laws. He is sued solely in his official capacity.
13. Kristi Noem is Secretary of Homeland Security. She is one of the several cabinet officials charged with the overall administration and enforcement of the immigration laws. She bears overall responsibility for DHS's detention policies nationwide. ICE is a component of the Department of Homeland Security and therefore falls under her authority. She is sued solely in her official capacity.
14. Pamela Jo Bondi is Attorney General of the United States. The Executive Office for Immigration Review (EOIR), which operates the United States immigration courts and the BIA, is part of the Department of Justice (DOJ) and thus falls under her control. She is sued solely in her official capacity.

Factual And Legal Background

15. M.S. is a 22-year-old native and citizen of Russia. He was 19 years old when he and his family came to the United States. His father publicly spoke against the invasion of Ukraine. As a result, he was taken into police custody, interrogated, and told that his sons, including M.S., would be conscripted into the Russian army as a demonstration of his loyalty to Russia.
16. After arriving in Mexico, the family scheduled appointments to present themselves at the border to request asylum.
17. M.S.'s case was subject to the provisions of the Circumvention of Lawful Pathways (CLP) rule, which took effect on May 11, 2023, and is codified at 8 C.F.R. §§ 208.33, 1208.33. This rule establishes a rebuttable presumption of asylum ineligibility for any noncitizen who entered the United States (1) between May 11, 2023, and May 11, 2025; (2) from Mexico at the southwest land border or adjacent coastal borders; (3) without documents authorizing lawful admission; (4) after having traveled through a third country that was a signatory to either the 1951 United Nations Convention Relating to the Status of Refugees or the 1967 Protocol Relating to the Status of Refugees. But the presumption does not apply to noncitizens who presented themselves at a port of entry pursuant to an appointment scheduled through the CBP One Application.
18. Since Mexico is a signatory to a treaty providing for the protection of refugees and M.S. did not apply for asylum in that country, he would thus be presumed ineligible for asylum unless he presented himself at a port of entry pursuant to a pre-scheduled CBP One appointment.

19. M.S. and his family remained in Mexico until August 6, 2023, the date of the appointment they had received through the CBP One application. They presented themselves at the San Ysidro Port of Entry, and notwithstanding M.S.'s strict compliance with the CLP's procedures and his lack of any criminal history, ICE likely immediately issued an order of expedited removal—an order requiring his removal from the United States without a hearing before an Immigration Judge—against him and certainly did detain him. *See* I.N.A. § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i). He was separated from his family and later transferred to a facility in Louisiana and then to the ICE Denver Contract Detention Facility, where he has remained ever since.
20. Because he expressed a fear of returning to Russia, he was referred to USCIS so that an asylum officer could interview him to determine whether he had a credible fear of persecution or torture in Russia and should be allowed to fully present his claims for protection in Immigration Court. *See* I.N.A. § 235(b)(1)(A)(ii), 8 U.S.C. § 1225(b)(1)(A)(ii). M.S. and his family are from [REDACTED] and their best language is [REDACTED] not Russian. Moreover, M.S.'s father had not told his sons about the threats against them. An asylum officer interviewed M.S. with a Russian interpreter and, because M.S. had limited information about his case, found that he had not established a credible fear of persecution or torture in Russia.
21. On May 21, 2024, M.S. submitted a request to the Houston Asylum Office for reconsideration of the negative credible-fear determination. Two days later, the office decided to place M.S. in removal proceedings in the interest of family unity. *See* Exh. B.

22. It therefore issued a Notice to Appear (NTA), the document that initiates removal proceedings under I.N.A. § 240, 8 U.S.C. § 1229a. *See* Exh. C. The NTA was not filed with the Aurora Immigration Court until June 5, 2024. *See id.* On The NTA, he is designated as an arriving alien. *See id.*
23. It is not altogether clear under which statutory scheme M.S. is detained. The fact that he went through the credible-fear process might suggest that he is subject to the mandatory-detention provisions at I.N.A. § 235(b)(1)(B), 8 U.S.C. § 1225(b)(1)(B). But both mandatory detention provisions in this subparagraph require that an asylum officer first determine whether the noncitizen has a credible fear of persecution or torture. *See id.* § 235(b)(1)(B)(ii), 1225(b)(1)(B)(ii) (mandatory detention if asylum officer finds that noncitizen has credible fear), § 235(b)(1)(B)(iii)(IV), 1225(b)(1)(B)(iii)(IV) (mandatory detention if asylum officer finds that noncitizen does not have credible fear). An asylum officer did initially determine that M.S. did not establish a credible fear of persecution or torture, but he was later issued an NTA as a matter of discretion, not as the result of a new credible-fear determination. Thus, I.N.A. § 235(b)(1)(B), 8 U.S.C. § 1225(b)(1)(B) does not govern his detention.
24. When the government issued the NTA, it also issued a warrant for M.S.'s arrest consistent with the procedures at 8 C.F.R. § 236.1(b)(1). *See* Exhibit A at 4. This would seem to indicate that he was, in DHS's view, detained under I.N.A. § 236(a)(1), which governs the detention of noncitizens "pending a decision on whether [they are] to be removed from the United States." Though I.N.A. § 236(a)(2) does allow for release on bond, the DOJ's regulations dictate that immigration judges do not have jurisdiction to

consider requests for bond by arriving aliens such as M.S.. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B).

25. But the BIA's recent decisions in *Q. Li*, 29 I. & N. Dec. 66 (B.I.A. 2025) and *Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), though not precisely on point, suggest that EOIR would not consider M.S. to be detained under I.N.A. § 236(a)(1), 8 U.S.C. § 1226(a)(1), but rather under I.N.A. § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). This subparagraph mandates the detention of all applicants for admission who cannot prove that they are clearly and beyond a doubt entitled to be admitted to the United States. But subparagraph (b)(ii) specifically says that subparagraph (a) does not apply to anyone "to whom paragraph (1) applies," i.e., who can be subject to an order of expedited removal.
26. Whichever statutory scheme applies, the result is the same: M.S. cannot request a bond hearing before an Immigration Judge. His only hope for release is a grant of parole by ICE.
27. On July 22, 2024, an immigration judge held a hearing on the merits of M.S.'s applications for Asylum, Restriction on Removal, and Protection under the Convention Against Torture. The Immigration Judge granted him asylum on August 7, 2024. *See* Exh. C.
28. DHS appealed this decision to the BIA on September 5, 2024. *See* Exh. D. Briefing was completed on October 24, 2024.
29. On January 29, 2025, the BIA placed the case on hold pending confirmation from DHS that the necessary background checks were complete. *See* Exh. E. Months passed, and despite the efforts of his attorneys, DHS did not file that notice, meaning that the case

remained pending before the BIA, and M.S. continued in detention, for over nine extra months. *See* Exhs. F, H, and I. This despite the fact that DHS confirmed that it had taken the fingerprints needed to complete the background checks. *See* Exh. I.

30. While M.S.'s appeal was languishing at the BIA, his father was granted asylum. *See* Exh. G.

31. On November 4, 2025, the BIA finally issued a decision sustaining DHS's appeal and remanding the case to an immigration judge for further proceedings. *See* Exh. J.

32. M.S.'s father subsequently filed a Form I-730, Refugee/Asylee Relative Petition, to accord him asylum status by virtue of their familial relationship. *See* Exh. K; I.N.A. § 208(b)(3), 8 U.S.C. § 1158(b)(3).

33. On December 4, 2025, an immigration judge administratively closed M.S.'s removal proceedings—meaning that his case has been temporarily removed from the Immigration Court's calendar—pending the adjudication of the I-730. *See* Exh. L; 8 C.F.R. § 1003.18(c).

34. It is uncertain how long the Form I-730 will take to process. But it will likely take several weeks or even months, during which time M.S.'s detention will almost certainly continue. Even if he were to proceed with his own application for asylum, his detention could well continue for months. If an immigration judge denied his application, he would appeal that decision to the BIA. Conversely, DHS might once again appeal a grant of asylum or other relief from removal.

35. M.S. has never been arrested or convicted for any conduct that would be considered criminal in the United States. The government, then, has no basis to consider him a danger to the community.

Statement of Claims

COUNT ONE – VIOLATION OF M.S. 'S DUE-PROCESS RIGHTS UNDER THE FIFTH AMENDMENT

36. M.S. incorporates by reference paragraphs 1 through 35 as if fully set forth herein.
37. The Fifth Amendment to the United States Constitution provides that “No person shall . . . be deprived of . . . liberty . . . without due process of law.” As the Supreme Court has stated, “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due-Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
38. M.S. has a strong interest in being free from confinement. There is no reason to believe that he poses a danger to the community. And his demonstrated compliance with all immigration procedures, along with the willingness of a friend to sponsor him, count against any allegation that he is a flight risk. Moreover, his detention has already lasted for 28 months and will likely continue for several months more.
39. M.S. does not seek to circumvent or abridge the procedures for consideration of his applications for relief from removal. All he asks is to be at liberty, able to live with his family, while this consideration proceeds.
40. M.S. has already been detained for nearly five times the length of detention the Supreme Court approved of in *Demore v. Kim*, 538 U.S. 510, 530 (2003). As matters stand, he

faces the prospect of being detained for at least six more months. This timeframe is substantially disproportionate to the government's interest in promptly determining whether he will be allowed to remain in the United States.

Prayer for Relief

Wherefore, M.S. respectfully prays the Court to grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Issue a writ of habeas corpus ordering that the government either release M.S. or provide him with a bond hearing within seven days at which the government will bear the burden of proving by clear and convincing evidence that his continued detention is justified and during which his ability to pay will be considered in fixing the amount of any bond;
- C. Award him reasonable attorney's fees and costs;
and
- D. Grant such further relief as the Court deems just and proper.

Respectfully submitted this 12th day of December 2025,

s/ Henry D. Hollithron

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