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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Abdurrahman Tuncay Tugbay Petitioner, v. Juan Baltazar, Warden of the Denver Contract Detention Facility, Aurora, Colorado; Robert Hagan, Field Office Director of Denver Field Office of U.S. Immigrations and Customs Enforcement; Todd Lyons, acting Director of U.S. Immigration and Customs Enforcement Kristi Noem, Secretary of the U.S Department of Homeland Security; and Pamela Bondi Attorney General of the United States, in their official capacities, Respondents.	Case No. 26-cv-00335 **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case challenges the unlawful detention of Abdurrahman Tuncay Tugbay ("Petitioner"), who is currently in the custody of Immigration and Customs Enforcement ("ICE") at Denver Contract Detention Facility.

2. Petitioner is a native of Turkey who fled his country and entered the United States to escape persecution on or about April 25, 2024, whereupon he was taken into custody by the Department of Homeland Security ("DHS"). On or about April 26, 2024, Respondent DHS found that Petitioner was neither a flight risk nor danger to the community and released Petitioner from ICE detention under Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a).

3. However, on or about December 5, 2025, ICE re-detained him without affording him an opportunity to be heard.

4. Respondents-Defendants' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, and the Administrative Procedure Act.

5. Petitioner brings this action for habeas seeking relief ordering Respondents to release him; in the alternative, schedule a bond hearing before an immigration judge within seven (7) days and, at such hearing, require Respondent DHS to bear the burden of proving, with the preponderance of evidence, that Petitioner is a flight risk or danger to the community.

JURISDICTION AND VENUE

6. This action arises under the Constitution of the United States, the Immigration Nationality Act (INA), 8 U.S.C. § 1101 *et seq*., and Administrative Procedure Act, 5 U.S.C. § 551, *et seq*.

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

9. Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Petitioner is detained

at Denver Contract Detention Facility, Aurora, Colorado, which is within the jurisdiction of this District. Respondent Juan Baltazar, Denver Contract Detention Facility, is Petitioner's immediate custodian, Respondents are officers of United States agencies, and there is no real property involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

12. Petitioner has lived in the United States for over one year. Petitioner is currently detained at Denver Contract Detention Facility.

13. Respondent Juan Baltazar, Warden of the Denver Contract Detention Facility, has immediate physical custody of Petitioner.

14. Respondent Robert Hagan is sued in his official capacity as the Field Office Director of Denver Field Office of U.S. Immigrations and Customs Enforcement. Respondent Hagan is a legal custodian of Petitioner.

15. Respondent Todd Lyons is sued in his official capacity as the acting Director of the U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner.

16. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

17. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

18. Petitioner is a 29-year-old citizen of Turkey.

19. Petitioner fled Turkey to seek protection in the United States.

20. On or about April 25, 2024, Petitioner came to the United States at or near Tecate, California. Respondents arrested and detained Petitioner.

21. On or about April 26, 2024, Respondent DHS released Petitioner from its custody on an Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a).

22. On or about April 30, 2024, Respondent DHS has initiated the removal proceedings against the Petitioner.

23. Petitioner filed an application for asylum and withholding of removal (I-589) with the immigration court.

24. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

25. Upon information and belief, on July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

26. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

27. On September 5, 2025, the Board of Immigration Appeals (BIA) adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 2016 (BIA 2025). There, BIA departed from decades-long interpretation and settled understanding of the Immigration and Nationality Act, holding that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings before an Immigration Judge.

28. On or about June 9, 2025, Petitioner was issued multiple citations by Wyoming Highway Patrol.

29. On or about June 11, 2025, the Circuit Court of the First Judicial District of Laramie County, Wyoming, entered a judgment finding Petitioner guilty of Non-English-Speaking Driver (Wyo. Stat. § 31-18-701), Failure to Obtain Single Trip Permit (Wyo. Stat. § 31-18-201), Failure to Stop at Port of Entry (Wyo. Stat. § 31-18-301), and Operating a Commercial Vehicle without a Commercial Driver License (Wyo. Stat. § 31-18-701). The Laramie County Court sentenced Petitioner for 177 days' imprisonment and imposed a $2,320.00 fine and costs.

30. On or about December 5, 2025, ICE detained Petitioner. Petitioner has remained in ICE custody since that date and is currently detained at the Denver Contract Detention Facility.

31. On information and belief, Petitioner has suffered past persecution and possesses a well-founded fear of future persecution in his country of origin.

32. On information and belief, Petitioner has maintained lawful employment and established significant community ties in the United States.

33. On information and belief, Petitioner has complied with the requirements in his removal proceedings.

LEGAL FRAMEWORK

34. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

35. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to

appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

36. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

37. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerr*a, 24 I&N Dec. 37 (BIA 2006).

38. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.

39. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it.

40. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

EXHAUSTION

41. There is no requirement to exhaust, because no other forum exists in which Petitioner can raise the claims herein. Prudential exhaustion is not appropriate where agency expertise does not

makes agency consideration necessary to generate a proper record and reach a proper decision, relaxation of the requirement would not encourage the deliberate bypass of the administrative scheme, and administrative review is not likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. Prudential exhaustion is also not appropriate where a petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [their] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). There is also no statutory exhaustion requirement prior to challenging the constitutionality of an arrest or detention under the Administrative Procedure Act.

42. Petitioner's any request for bond from an immigration judge would be futile considering a September 5, 2025, BIA decision where the BIA adopted DHS' interpretation of the INA as mandating detention without bond for those in Petitioner's position. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA's decision held that immigration judges lack jurisdiction to hold bond hearings or grant bond to all individuals charged with entering the country without inspection. BIA decisions are binding on immigration judges, and *Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like Petitioner to hold a custody redetermination hearing. Therefore, judicial intervention enjoining Respondents from preventing petitioner from having a bond hearing pursuant to the holding in *Hurtado* is necessary to enable petitioner to avail himself of his administrative remedies.

43. Therefore, the Court should consider the merits of the Petition.

CLAIMS FOR RELIEF

COUNT ONE
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), and Violation of 8 U.S.C. §1226(a), 8 C.F.R. §236(d)

44. The allegations in the above paragraphs are realleged and incorporated herein.

45. First, 8 U.S.C. §1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. See 8.U.S.C. § 1229a. Individuals in § 1226 detention are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. See 8 U.S.C. § 1226(c).

46. Second, the INA provides mandatory detention for noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under §1225(b)(2).

47. Lastly, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. See 8 U.S.C. § 1231(a)-(b).

48. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

49. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

50. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

51. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history

rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a)(1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

52. Upon information and belief, on July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

53. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

54. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 2016 (BIA 2025). There, BIA departed from decades-long interpretation and settled understanding of the Immigration and Nationality Act, holding that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings before an Immigration Judge.

55. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

56. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation.

57. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

58. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a).

59. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

60. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

61. For these reasons, Petitioner's detention violates 5 U.S.C. § 706(2)(A), 8 U.S.C. § 1226(a), and 8 C.F.R. § 236(d).

COUNT TWO
Violation of Fifth Amendment Right to Substantive Due Process

62. The allegations in the above paragraphs are realleged and incorporated herein.

63. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States,

including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas,* 533 U.S. at 693; accord *Flores*, 507 U.S. at 306.

64. Due process requires that government action be rational and non-arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

65. Here, Petitioner is challenging Respondents' unlawful custody determination that Petitioner is subject to detention under 8 U.S.C. §1225(b) and is ineligible for bond, which violates Petitioner's right to substantive due process of law afforded him through the Fifth Amendment to the United States Constitution.

66. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT THREE
Violation of Fifth Amendment Right to Procedural Due Process

67. The allegations in the above paragraphs are realleged and incorporated into herein.

68. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The Mathews factors are as follows: First, the private interest that will be affected by the official action; [S]econd, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

69. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner "has perhaps the most acute private interest known

to personkind short of life itself: bodily freedom." *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685, at *34 (D. Md. Aug. 24, 2025).

70. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk. Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims.

71. As to the third factor, there is no significant governmental interest in continuing to hold Petitioner in custody.

72. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order prohibiting the Respondents from transferring Petitioner from the District of Colorado absent prior leave of the Court;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that Petitioner's detention under 8 U.S.C. 1225(b)(2) is unlawful, that his detention without an individualized determination and his revocation of parole from custody was made in violation of the Due Process Clause of the Fifth Amendment, statute and regulation;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately; in the alternative, issue a Writ of Habeas Corpus ordering Petitioner to be scheduled for a bond hearing before an immigration judge within seven (7) days and, at such hearing, require Respondent DHS to bear the burden of proving, with the preponderance of evidence, that Petitioner is a flight risk or danger to the community;

(6) Permanently enjoin Respondents from re-detaining Petitioner under § 1225(b)(2);

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

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

Respectfully submitted,

Dated: January 27, 2026

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Abdurrahman Tuncay Tugbay, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 27th day of January 2026.

/s/ *Aaron M. Bayram, Esq.*
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