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

Hamza KARADAG)

Petitioner,)

Case No. _____)

Agency No. )

VERIFIED EMERGENCY)

PETITION FOR WRIT OF
v.)

HABEAS CORPUS
[Expedited Hearing Request])

JUAN BALTASAR, In his official Capacity,
Warden of Denver Contract)
Detention Facility; ROBERT GUADIAN,
In his official CapacityField)
Office Director of Enforcement and Removal)
Operations, Denver Field Office, Immigration and)
Customs Enforcement; KRISTI NOEM, U.S.)
Secretary of Homeland Security,)
In her official capacity)

Respondents.)
_____)

INTRODUCTION

1. Petitioner Hamza Karadag is in the physical custody of Respondents at the Denver Contract Detention Facility located in Aurora, CO. He now faces unlawful and constitutionally impermissible prolonged detention despite having been granted asylum by an Immigration Judge (IJ). *See Ex. A, IJ's Order Granting Asylum.*
2. Petitioner has been continuously detained since December 15, 2024, for more than thirteen months.
3. On June 30, 2025, an IJ found Petitioner eligible for asylum and granted his application. Despite this favorable merits determination, Petitioner remains detained pending the Department of Homeland Security's (DHS) appeal of that grant. *See Ex. B.*
4. On September 17, 2025, the IJ denied Petitioner's request for a custody redetermination, concluding that the court lacked jurisdiction to conduct a bond hearing based on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See Ex. C.*
5. Despite this judicial finding that Petitioner is a legal asylee and cannot be removed to his home country under 8 U.S.C. § 1158(c)(1)(A), Respondents continue to detain him. This detention no longer serves a legitimate regulatory purpose and is now purely punitive.
6. Petitioner's prolonged detention without any process to determine whether he poses a flight risk or danger to the community violates the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court should grant habeas relief and order that Petitioner's immediate release.

JURISDICTION

7. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Denver Contract Detention Facility located in Aurora, CO.
8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Colorado, the judicial district in which Petitioner currently is detained.
11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Colorado.

REQUIREMENTS OF 28 U.S.C. § 2243

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

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

14. Petitioner Hamza Karadag is a native and citizen of Turkey who has been in immigration detention since December 15, 2024. He was granted asylum by an IJ on June 30, 2025. ICE has denied Petitioner's requests for release, and he is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
15. Respondent Robert Guadian is the Director of the Denver ICE Field Office and is sued in his official capacity. Respondent Guadian is the immediate custodian of Plaintiff (and other similarly situated) and is responsible for detaining Plaintiff and others similarly situated.
16. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
17. Respondent Juan Baltasar is employed by The GEO Group as Warden of the Aurora Facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

I. The Statutory Detention Framework

18. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
19. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) 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).
20. Second, the INA provides for mandatory detention of 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).
21. Last, 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).
22. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
23. 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).
24. 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).

25. 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)).
26. 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.
27. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ 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.
28. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A).

29. 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.
30. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).
31. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263

(N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

32. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

33. 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].”

34. 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). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.
35. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.
36. 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).

II. Application of § 1225(b) to Noncitizens with Credible Fear

37. When a noncitizen arrives at a port of entry without proper documentation and expresses a fear of persecution or torture, an asylum officer must conduct a credible fear interview to determine if the noncitizen "has a credible fear of persecution [or torture]." 8 U.S.C. § 1225(b)(1)(A)(ii) and (B)(ii); 8 C.F.R. § 208.30.

38. If the asylum officer concludes that the noncitizen possesses a credible fear of persecution or torture, the expedited removal order is vacated, and the noncitizen is referred for non-expedited removal proceedings under 8 U.S.C. § 1229a, during which time the noncitizen may file an application for asylum and withholding of removal.

Castro v. United States Dep't of Homeland Sec., 835 F.3d 422, 426 n.4 (3d Cir. 2016) (quoting 8 C.F.R. § 1208.30(g)(2)(iv)(B)).

39. Accordingly, the Petitioner is in active § 1229a proceedings, as it is on appeal to the BIA.

40. Upon being placed in § 1229a removal proceedings following a positive credible fear determination, noncitizens are detained under § 1226(a), not § 1225(b), and are entitled to seek a bond hearing before an immigration judge. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B) (providing that arriving aliens "referred for [§ 1229a] proceedings following a credible fear determination" are eligible for bond hearings).

III. Due Process Requirements for Prolonged Immigration Detention

41. Immigration detention should not be used as 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).

42. 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).

43. The Due Process Clause protects "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

IV. The Grant of Asylum Prohibits Removal and Renders Continued Detention

Unconstitutional Under *Zadvydas*.

44. The Supreme Court has established that immigration detention is constitutionally permissible only if it bears a "reasonable relation" to its regulatory purpose—ensuring the appearance of a noncitizen for removal. *Id.* at 690 (2001).
45. Under 8 U.S.C. § 1158(c)(1)(A), once asylum is granted, the Government "**shall not remove or return the alien.**" (emphasis added). Because the IJ has determined Petitioner cannot be removed, the "reasonably foreseeable" possibility of removal is now zero.
46. Respondents lack a stay of the asylum Grant; Thus, the IJ Order Remains the Operative Legal Status.
47. Respondents act as though their appeal to the BIA "erases" the IJ's decision. This is a violation of the governing regulations.
48. 8 C.F.R. § 1003.6(a) explicitly states "**[t]he filing of an appeal shall not operate as a stay of execution of the order of the Immigration Judge, unless the Board specifically orders a stay.**" (emphasis added).
49. No stay has been issued by the BIA. Consequently, the Petitioner is, by judicial order, a legal asylee. Under 8 C.F.R. § 1208.14(e), this grant is effective indefinitely. There is no statutory authority for the mandatory detention of a person holding a live grant of asylum.
50. Petitioner respectfully requests immediate release from custody.

FACTS

51. Hamza Karadag, a native and citizen of Turkey, entered the United States at an unknown location on or about December 15, 2024.
52. Upon his arrival, he was encountered by Department of Homeland Security (DHS) officials and placed under an expedited removal order pursuant to INA § 235(b)(1).
53. Petitioner expressed a fear of persecution if returned to Turkey. Consequently, an asylum officer conducted a credible fear interview.
54. Following a positive credible fear determination pursuant to 8 C.F.R. § 208.30, the expedited removal order was vacated.
55. Petitioner has remained in continuous DHS custody since December 15, 2024—more than thirteen months as of the filing of this Petition.
56. DHS initiated formal removal proceedings against Petitioner under INA § 240.
57. On March 24, 2025, Petitioner timely filed his Form I-589, Application for Asylum and for Withholding of Removal.
58. An individual merits hearing was conducted on June 26, 2025.
59. On June 30, 2025, the Immigration Judge issued a written decision finding Petitioner eligible for relief and granted his application for asylum.
60. Despite this grant of asylum, Petitioner was not released from custody.
61. DHS filed a Notice of Appeal with the Board of Immigration Appeals (BIA) on July 30, 2025.
62. Both Petitioner and DHS submitted their respective appellate briefs on September 15, 2025. The appeal remains pending before the BIA with no decision date scheduled.
63. While the merits appeal was pending, Petitioner sought a custody redetermination from the Immigration Court on September 4, 2025.

64. On September 17, 2025, the IJ denied the request for a bond hearing without conducting a physical or telephonic proceeding.
65. In the written denial, the IJ cited *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), as the basis for the court's lack of jurisdiction to hold a bond hearing.
66. Petitioner faces the prospect of continued indefinite detention pending resolution of DHS's appeal, which could take many additional months or even years.
67. Petitioner is neither a flight risk nor a danger to the community.

CLAIMS FOR RELIEF

COUNT I

Violation of the Due Process Clause of the Fifth Amendment

Prolonged Detention

68. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
69. The Due Process Clause of the Fifth Amendment to the United States Constitution provides: "No person shall be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Due Process Clause applies to noncitizens within the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.
70. "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." *Id.* at 690.

71. 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, 425 (1979).
72. Petitioner has been detained for more than thirteen months, his continued detention is in violation of his Due Process rights under the Fifth Amendment.
73. This constitutional violation is particularly acute given that an Immigration Judge has already determined, after a full merits hearing, that Petitioner is eligible for asylum—a finding that necessarily includes a determination that Petitioner is credible and poses no danger to the United States.

COUNT II

Violation of the Due Process Clause of the Fifth Amendment

Detention of Granted Asylum

74. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
75. On June 30, 2025, an IJ found Petitioner eligible for asylum and granted his application after a full individual merits hearing.
76. The grant of asylum, although not yet final due to DHS's pending appeal, represents a judicial determination that Petitioner has suffered past persecution or has a well-founded fear of future persecution on account of a protected ground, and that he merits protection in the United States.
77. Petitioner has a significant liberty interest in freedom from detention, which is heightened by the Immigration Judge's determination that he qualifies for asylum.

78. In *C.B. v. Oddo*, the district court squarely addressed this circumstance. There, the IJ granted the petitioner asylum after a full merits hearing, yet DHS continued to detain him solely because it filed an appeal with the Board of Immigration Appeals. *C.B. v. Oddo*, No. 3:25-cv-00263, 2025 WL 2977870, at *3 (W.D. Pa. Oct. 22, 2025). The court emphasized that despite the asylum grant, the petitioner “was not released” and instead remained detained for months with no end in sight. *Id.*
79. The *Oddo* court recognized that a grant of asylum fundamentally alters the due process analysis. Detention that may be regulatory during the adjudication of removability becomes constitutionally suspect once relief has been granted and detention continues only because of the Government’s litigation choice to appeal. *Id.* at 6–8. The court explained that allowing DHS to detain an individual granted asylum automatically during its own appeal would permit the Government to prolong detention indefinitely, effectively nullifying the liberty interest created by the asylum grant. *Id.* at 7.
80. The government's continued detention of a granted asylum—pending an appeal that may take many months or years—without any individualized determination of flight risk or danger, violates the Due Process Clause.
81. Due process requires, at minimum, that Petitioner be afforded an individualized bond hearing before a neutral decision-maker to determine whether his continued detention is justified.
82. The complete denial of any process to contest his continued detention, particularly in light of the favorable asylum determination, violates Petitioner's rights under the Fifth Amendment.

83. Accordingly, where an IJ has granted asylum and DHS continues detention solely due to a pending administrative appeal, due process requires, at minimum, an individualized bond hearing. Absent such process, prolonged detention violates the Fifth Amendment and warrants habeas relief.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the District of Colorado while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) before a neutral immigration judge of the Executive Office for Immigration Review within seven days, or in the alternative, order Petitioner's immediate release;
- e. Grant any other and further relief that this Court deems just and proper.

DATED this 9th day of February 2026.

Respectfully submitted,

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