
**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

STANKO KUZMIC,

Petitioner,

v.

JUAN BALTASAR, Warden, GEO Group ICE
Processing Center;

ROBERT HAGAN, Director of the Denver Field Office
for U.S. Immigration and Customs Enforcement;

TODD LYONS, Acting Director of U.S. Immigration and
Customs Enforcement;

KRISTI NOEM, Secretary, U.S. Department of Homeland
Security; and

PAMELA BONDI, U.S. Attorney General,

in their official capacities,

Respondents.

Case No.: 26-cv-577

**EXPEDITED
CONSIDERATION UNDER 28
USC § 1657(a) REQUESTED**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Stanko Kuzmic is a citizen of Bosnia Herzegovina who entered the U.S. lawfully with a J-1 visa on May 18, 2021. He is a successful entrepreneur running his own business and has diligently filed his taxes since 2021. He has no criminal record and enjoys widespread support in the community among friends and employers.

2. Petitioner was detained by Immigration & Customs Enforcement (ICE) on October 23, 2025. On December 4, 2025, the immigration court conducted a constitutionally-flawed custody redetermination hearing (i.e. bond hearing) in which it required Petitioner to bear the burden of proving that he is neither a danger nor a flight risk. The immigration court found that Petitioner had not met his burden and denied bond.

3. Because Petitioner's detention violates his constitutional due process rights, this Court should grant the instant petition for a writ of habeas corpus and order release.

CUSTODY

4. Petitioner is in the physical custody of Respondents, imprisoned at the Aurora ICE Processing Center, an immigration detention facility in Aurora, Colorado. Petitioner is under direct control of Respondents.

JURISDICTION

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1331 (federal question) because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

6. 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.

VENUE

7. Venue is proper because Petitioner is detained at the GEO Group's ICE Processing Center in Aurora, Colorado, which is within the jurisdiction of this District. In addition, venue is proper in this District because a substantial part of the events giving rise to Petitioner's claims occurred in this District, he resides in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

EXPEDITED TREATMENT OF HABEAS CLAIMS

8. Federal law provides that each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite consideration of certain actions including any action brought under chapter 153 of Title 18 (habeas corpus cases). 28 U.S.C. § 1657(a).

9. Congress has directed courts to 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 OSC 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).

10. 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

11. Petitioner Stanko Kuzmic is a citizen of Bosnia and Herzegovina. Prior to his detention he resided in Eagle County, Colorado. He is being detained at the GEO Group’s ICE Processing Center in Aurora, Colorado. He is in custody, and under the direct control, of Respondents and their agents.

12. Respondent Baltasar is sued in his official capacity as the Warden of the GEO Group’s ICE Processing Center in Aurora, Colorado. He has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain non-citizens. Respondent Baltasar is a legal custodian of Petitioner.

13. Respondent Hagan is sued in his official capacity as Field Office Director of the Denver Office of U.S. Immigration and Customs Enforcement (ICE). Respondent Hagan is a legal custodian of Petitioner and is responsible for detaining him.

14. Respondent Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement (ICE). Respondent Lyons is responsible for Petitioner’s detention.

15. Respondent 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. Respondent Noem has ultimate custodial authority over Petitioner.

16. Respondent 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 and custody redetermination cases and oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

EXHAUSTION

17. No statutory exhaustion requirement applies to Plaintiff's claims of unlawful detention.

18. It is well settled that exhaustion is required only when Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In all other instances, "sound judicial discretion governs." *Id.* Here, in the detention statute pursuant to which Petitioner is detained, 8 U.S.C. § 1226(a), no statutory exhaustion requirements apply to Petitioner's claim of unlawful detention and therefore exhaustion is not required.

19. Furthermore, courts have recognized that exhaustion is not required in cases where the petitioner can demonstrate that exhaustion would be futile. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010).

20. In the present case, Petitioner's claim for relief is premised on a constitutional challenge to the Board of Immigration Appeal's ("BIA") interpretation of 8 U.S.C. § 1226(a) that "[t]he burden is on the alien to show to the satisfaction of the Immigration Judge that he or she merits release on bond." *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

21. The BIA has consistently reaffirmed its commitment to this improper allocation of the burden to the noncitizen. *See Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (BIA 2018) ("An alien in a custody determination under section 236(a) of the Immigration and Nationality Act, 8

U.S.C. § 1226(a) (2012), must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property is not a threat to the national security, and does not pose a risk of flight.”). Precedent BIA decisions are binding both on immigration judges and the Board of Immigration Appeals itself. 8 C.F.R. § 1003.1(g); *see also* Board of Immigration Appeals Practice Manual Ch. 1.4(d)(1), available at <https://www.justice.gov/eoir/policy-manual-eoir/part-III/bia/chapter-1-4>, (last accessed Feb. 12, 2026). Accordingly, an appeal to the BIA premised on the argument that the BIA’s allocation of the burden of proof to the noncitizen violates the Constitution would be futile.

LEGAL FRAMEWORK

22. Noncitizens in the United States are entitled to due process protections under the United States Constitution. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 206 (1993)) (stating “[i]t is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”). The U.S. Supreme Court clarified that people subject to immigration detention have liberty interests protected by the due process clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). (“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.”).

23. Government detention occurring outside of criminal proceedings violates the due process clause unless the detention is necessary under the narrow non-punitive circumstances “where a special justification, such as harm-threatening mental illness, outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

24. The government's authority to imprison people pending their removal proceedings is generally governed by 8 U.S.C. § 1226. An individual is eligible to be released on bond pursuant to 8 U.S.C. § 1226(a), unless they are subject to mandatory detention under 8 U.S.C. § 1226(c). Here, Petitioner is detained pursuant to § 1226(a).

25. The statute is silent as to the burden of proof in bond proceedings conducted under § 1226(a). However, in 1976, the BIA determined in *Matter of Patel* that the burden was on the government to prove that a noncitizen should be detained. *See Matter of Patel*, 15 I. & N. Dec. 666, 666 (BIA 1976). In so finding, the BIA held that “[a]n alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk,” and required that the government provide reasons to justify detention. *See Matter of Patel*, 666-67 (BIA 1976) (citations omitted).

26. Over two decades later, the BIA changed course and shifted the burden to the noncitizen to prove that “his release would not pose a danger to property or persons, and that he is likely to appear for any future proceedings.” *In re Adeniji*, 22 I. & N. Dec. 1102, 1116 (BIA 1999). Since then, the BIA has consistently maintained that the noncitizen carries the burden to prove that he or she is not a danger or a flight risk. *See Siniauskas*, 27 I. & N. at 207 (“An alien . . . must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property is not a threat to the national security, and does not pose a risk of flight.”).

27. However, in recent years numerous federal district courts, including this one, have held that the BIA's holding in *Matter of Adeniji* is unconstitutional because placing the burden on the noncitizen in § 1226(a) bond proceedings, rather than the government, violates the noncitizen's

constitutional due process rights. *See, e.g. Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211 (D. Colo. July 2, 2019) (“The court finds that allocating the burden to a noncitizen to prove that he should be released on bond under § 1226(a) violates due process . . .”); (*L.G., Petitioner, v. Choate*, 744 F. Supp. 3d 1172 (D. Colo. 2024) (“the current scheme of placing the burden on Petitioner to prove that he should be released on bond contravenes due process”); *see also Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018) (“[T]here has emerged a consensus view that where . . . the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified [under the Due Process Clause.]”)(collecting cases); *but see, e.g., Basri v. Barr*, 469 F. Supp. 3d 1063, 1065-66 (D. Colo. 2020) (finding “the Constitution does not require the government to prove detention is necessary in immigration bond hearings”).

28. In *Diaz-Ceja v. McAleenan*, then-magistrate judge Nina Wang engaged in a thorough review of BIA decisions, Supreme Court precedent, and case law from federal courts throughout the U.S., ultimately finding that “the current scheme of placing the burden on Petitioner to prove that he should be released on bond contravenes due process requirements.” *Id.* at *9. The court further clarified its reasoning stating that “allocating the burden to a noncitizen to prove that he should be released on bond under § 1226(a) violates due process as it assigns the risk of error to the party with the greater interest in their individual liberty as balanced against the Government’s interests.” *Id.*

STATEMENT OF FACTS

29. Mr. Kuzmic is a citizen of Bosnia and Herzegovina. He entered the U.S. lawfully on a J-1 visa on May 18, 2021, and overstayed his visa.

30. Mr. Kuzmic is an asylum-seeker with an application for relief pending before the immigration court.

31. On October 23, 2025, Mr. Kuzmic was detained by ICE officials in Eagle County, Colorado.

32. After being held for several hours at a facility in Glenwood Springs, CO, Mr. Kuzmic was transported to the GEO ICE Processing Center in Aurora, CO, arriving in the early hours of October 24, 2025. He has been detained at this facility since that time.

33. On December 4, 2025, the Aurora Immigration Court conducted a bond hearing in which Mr. Kuzmic, through counsel¹, submitted extensive evidence demonstrating that he was neither a danger to the community nor a flight risk. While the immigration court found that he was not a danger to the community, the court found that Mr. Kuzmic had not met his burden of proving that he was not a flight risk and denied bond. Ex. 1-1

34. On January 8, 2026, the immigration court issued a “Memorandum of Bond Decision and Order,” memorializing the court’s oral decision issued at the conclusion of the bond hearing on December 4, 2025. Ex. 1-2

35. In the Memorandum of Bond Decision, the immigration court found that it was a “close case,” yet explained that it ultimately denied bond because Mr. Kuzmic was unable to meet the burden of proof placed on him by the court to establish that he was not a flight risk. *Id.*

36. On February 3, 2026, Mr. Kuzmic filed an appeal of the bond decision with the BIA, arguing that the immigration judge erred in finding Mr. Kuzmic a flight risk despite

¹ Mr. Kuzmic is represented by separate counsel in his bond and removal cases before the immigration court.

overwhelming evidence to the contrary. No constitutional due process claims were presented in the BIA appeal.

CLAIMS FOR RELIEF

Count One

Unlawful Shifting of the Burden of Proof in Violation of the Fifth Amendment

37. The foregoing allegations are re-alleged and incorporated herein.
38. Plaintiff was denied a bond hearing in which the burden of proof is allocated to the government to show that his continued detention is warranted by proving by clear and convincing evidence that he is danger to others or a flight risk, and that even if he is, no combination of conditions will reasonably assure his future appearance and the safety of the community, and which further considers his ability to pay any bond amount and whether alternative forms of supervised release are sufficient.
39. Defendants continue to detain Petitioner following the denial of his bond hearing that did not satisfy the requirements of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
40. Had Defendants provided Petitioner with an adequate bond hearing, he could have been released.
41. Petitioner was prejudiced by the immigration court's error.

Count Two

**Detention in Violation of the Immigration and Nationality Act
and the Administrative Procedure Act**

42. The foregoing allegations are re-alleged and incorporated herein.

43. Petitioner is detained in violation of the Immigration and Nationality Act and the Administrative Procedure Act.

44. The government's placement of the burden on Plaintiff in a bond proceeding to show that he is not a danger nor a flight risk is not in accordance with the law under 5 U.S.C. § 706(2)(A), is contrary to his constitutional rights under 5 U.S.C. § 706(2)(B), and without observance or procedure required by law under 5 U.S.C. § 706(2)(D).

PRAYER FOR RELIEF

Wherefore, Petitioner asks this Court to grant him the following relief:

- (1) Assume jurisdiction over the matter;
- (2) Enjoin Petitioner's removal or transfer outside of this Court's jurisdiction during the pendency of this case;
- (3) Pursuant to 28 U.S.C. § 2243, forthwith award the writ or issue an order directing respondents to show cause why the writ should not be granted within three days;
- (4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment; the INA and implementing regulations, and the APA;
- (5) Grant a writ of habeas corpus directing Respondents to immediately release Petitioner on his own recognizance or, in the alternative, order Respondents to provide a custody redetermination hearing within three days in which the government will bear the burden to prove by clear and convincing evidence that Petitioner is a danger to the community or a flight risk thereby requiring continued detention;
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Dated: February 12, 2026

Respectfully submitted,

s/Luke Niermann

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ATTORNEY FOR PETITIONER

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Luke Niermann, submit this verification on behalf of the Petitioner because I am Petitioner's attorney. On the basis of documents reviewed and discussions with Petitioner, I hereby verify that statements made in this petition are true and correct to the best of my knowledge.

Dated: February 12, 2026

/s/ Luke Niermann
Attorney for Petitioner