UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 1:26-cv-2211

H.E.P.,

Petitioner,

v.

JUAN BALTAZAR, Warden of Denver Contract Detention Facility,
GEORGE VALDEZ, Acting Field Office Director, Denver Field Office, Immigration and Customs Enforcement,
MARKWAYNE MULLIN, Secretary, Department of Homeland Security,
TODD BLANCHE, Acting U.S. Attorney General,

Respondents.

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

INTRODUCTION

1. The Department of Homeland Security (DHS) took custody of Petitioner H.E.P on January 30, 2025. Sixteen months later, and five months after an immigration judge granted him asylum, he remains imprisoned at the Denver Contract Detention Facility.
2. H.E.P. has yet to receive a constitutionally adequate bond hearing during the sixteen months he has been locked up. Accordingly, H.E.P. petitions for a writ of habeas corpus ordering his release from detention or in the alternative, a bond hearing at which Respondents bear the burden of proving that he poses a flight risk or a danger to the community to justify his continued detention.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201-02 (declaratory relief), and 28 U.S.C. § 1651 (All Writs Act).
4. This Court may grant relief pursuant to 28 U.S.C. § 2241, § 2243, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
5. Respondents are detaining H.E.P. at the Denver Contract Detention Facility in Aurora, Colorado. *See* Ex. A, ICE Detainee Locator Results.
6. Venue is proper because Petitioner's immediate custodian at the Denver Contract Detention Facility is located in this District and a "substantial part of the events or omissions giving rise to the claim" occurred in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

7. Petitioner H.E.P. is a native and citizen of Venezuela. ICE has detained him for the past seventeen months at the Denver Contract Detention Facility in Aurora, Colorado.
8. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility and is the Petitioner's immediate custodian. He is sued in his official capacity.
9. Respondent George Valdez is the Acting Field Office Director of the ICE Denver Field Office and is responsible for ICE's operations in Colorado where Petitioner is held. He is sued in his official capacity.
10. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA and

oversees ICE operations and polices. Secretary Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

11. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, including the Executive Office for Immigration Review and the immigration court system. He is sued in his official capacity.

EXHAUSTION

12. The failure to exhaust administrative remedies does not bar Petitioner's claims unless "Congress specifically mandates." *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992). "But where Congress has not clearly required exhaustion, sound judicial discretion governs." *Id.*

13. The Court should not require exhaustion here as it would be futile to seek further administrative review of the immigration court's holding that it lacked jurisdiction to grant H.E.P. bond. *See Carr v. Saul*, 593 U.S. 83.93 (2021) ("[T]his Court has consistently recognized a futility exception to exhaustion requirements."). Immigration judges across the country, applying flawed but binding Board of Immigration Appeals (BIA) precedent, continue to hold that noncitizens like Petitioner are subject to mandatory detention under 8 U.S.C. § 1225(b). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). H.E.P.'s argument that the Government must bear the burden of proof at any bond hearing is likewise foreclosed by precedential BIA decisions. *See Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006); *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999).

14. Thus, Petitioner need not go through the futile exercise of raising arguments that immigration courts will inevitably reject.

15. Moreover, because H.E.P. raises colorable constitutional claims, administrative exhaustion should be excused. *Harline v. Drug Enf't Admin.*, 148 F.3d 1199, 1203 (10th Cir. 1998) (holding exhaustion may be excused for plaintiffs raising colorable constitutional claims).

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for a 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.*

17. 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).

18. "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).

19. Petitioner requests that the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, given the significant restraint on his liberty and the clear statutory and constitutional violations in this case.

TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT

20. The All Writs Act, 28 U.S.C. § 1651(a), empowers federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

21. Courts both inside and outside this district have invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district. *See Arosteguí-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 948-49 (D. Colo. Aug. 8, 2025) (listing cases).

22. Petitioner requests that this Court invoke the All Writs Act to bar his transfer out of the District of Colorado during the pendency of this habeas action, given the likelihood that he will be ordered to appear at a hearing shortly after this Court rules upon the habeas petition. Petitioner will need to coordinate with his Colorado-based attorneys for purposes of this litigation, to prepare for any immigration court hearings ordered by the Court, and to continue fighting DHS's appeal of his asylum order. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, 785 F. Supp. 3d 128, 148 (E.D. Va. May 6, 2025).

STATEMENT OF RELEVANT FACTS

23. Petitioner H.E.P. is a native and citizen of Venezuela.

24. On or about October 12, 2024, Customs and Border Protection (CBP) stopped H.E.P. at the southern border with his wife and two sons.

25. The following day, H.E.P. and his family were released on an Order of Recognizance, and H.E.P. was served with a Notice to Appear (NTA) before the immigration court. *See* Ex. B, Notice to Appear.

26. Although he was briefly stopped at the border, H.E.P.'s NTA does not identify him as an "arriving alien" but rather "an alien present in the United States who has not been admitted or paroled." *Id.*

27. On January 30, 2025, following an arrest for domestic violence, H.E.P. was taken into ICE custody pending his removal proceedings.

28. In June 2025, H.E.P. moved for a custody redetermination, seeking release on bond.

29. At his July 2, 2025 bond hearing, H.E.P. bore the burden of proving that he presented neither a flight risk nor a danger to the community. The immigration judge denied release on bond, reasoning that the immigration court lacked jurisdiction to grant him bond, and in the alternative, that the speculative nature of H.E.P.'s asylum claim made him a flight risk.

30. On January 1, 2026, an immigration judge granted H.E.P.'s application for asylum. DHS has appealed that decision to the BIA.

31. H.E.P. remains imprisoned at the Denver Contract Detention Facility while DHS pursues its appeal to the Board.

32. The Denver Contract Detention Facility is operated by the GEO Group. The facility holds up to 1,500 prisoners and has well-documented history of abuse and neglect, including multiple inmate deaths due to improper medical care. *See* Ex. D, Am.

Civil Liberties Union, *Cashing in on Cruelty: Stories of Death, Abuse, and Neglect at the GEO Immigration Detention Facility in Aurora* (2019).

LEGAL BACKGROUND

Immigration Detention

33. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, which set forth separate procedures for the removal and detention of arriving or recently arrived noncitizens and noncitizens entered the United States without admission or inspection. *Compare* 8 U.S.C. § 1225, *with* 8 U.S.C. §§ 1226, 1229a.

34. Section 1226 provides for the detention of noncitizens "already in the United States" pending standard removal proceedings under 8 U.S.C. § 1229a. 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (holding that § 1226 applies to noncitizens "already in the country"). For noncitizens subject to detention under § 1226, § 1226(a) sets forth the default rule, giving the government the discretion to arrest and detain noncitizens "pending a decision on whether the alien is to be removed from the United States," while § 1226(c) mandates the detention of certain classes of criminal noncitizens. 8 U.S.C. § 1226(a), (c).

35. For noncitizens subject to § 1226(a), DHS makes an initial custody determination and may detain the individual, release them on conditional parole, or release on bond. 8 U.S.C. §§ 1226(a); 8 C.F.R. §§ 1003.19(a), 1236.1(d). Conditional parole "permits a[noncitizen] to remain at liberty based upon a determination that he poses no risk or flight while his removal is actively sought." *Cruz-*

Miguel v. Holder, 650 F.3d 189 (2d Cir. 2011); *see also Serrano-Martinez v. De Anda-Ybarra*, No. 26-cv-529, 2026 WL 1068150, at *12 (D.N.M. Apr. 20, 2026).

36. The noncitizen may have DHS's initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board of Immigration Appeals (BIA), *see* 8 C.F.R. § 1236.1(d)(3).

37. At a bond hearing before the immigration court, the noncitizen bears the burden of "establish[ing] to the satisfaction of the Immigration Judge and th[e BIA] 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." *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006) (citing *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999)).

38. In contrast to § 1226(a)'s discretionary detention scheme for noncitizens already in the United States, the INA mandates detention for certain "applicants for admission." 8 U.S.C. §§ 1225(a), (b).

39. The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a[noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added).

40. Unlike noncitizens held under § 1226(a), those subject to detention under

§ 1225(b) are ineligible for release on bond and may only be released on parole under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 300 ("That express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released."). Under that statute, "[t]he Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).[1]

41. Section 1225(b) applies to two subclasses of "applicants for admission."

42. First, § 1225(b)(1) mandates the detention of "arriving aliens" who are placed in expedited removal proceedings. Expedited removal proceedings apply to "applicants for admission" who: "(1) [are] inadmissible because [they] lacks a valid entry document; (2) ha[ve] not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; *and* (3) is among those whom the Secretary of Homeland Security has designated for expedited removal." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (citing 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(I)–(II)).

43. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish that they have a credible

[1] Critically, humanitarian parole under § 1182(d)(5) is distinct from "conditional parole" under § 1226(a)(2)(B). *See Singh v. Noem*, No. 25-cv-1110, 2026 WL 146005, at *34 (D.N.M. Jan. 20, 2026).

fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the [expedited removal] procedures . . . shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

44. Section 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission but only those "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2).

45. Since IIRIRA was first enacted, courts and the U.S. Government have consistently taken the position that noncitizens who are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."); *see also Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as

an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States).

46. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

47. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it adopted when IIRIRA was first enacted and embraced for the next thirty years. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Ex. B, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission.

48. On September 5, 2025, the Board adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point.[1] *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

49. Yet the legislative history contradicts the Board's analysis. When it passed IIRIRA, Congress explained that the new § 1226(a) "restates the current provisions in section 242(a)(1) [1252(a)(1)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Mendoza Gutierrez*, 2025 WL 2962908, at *8 (quoting H.R. REP. 104-469, 229).

50. Further, DHS's novel interpretation of § 1225(b) would render recent amendments to the INA in the Laken Riley Act redundant. *See* Laken Riley Act, Pub. L. 119-1, § 2, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)). Specifically, the recent amendments to § 1226(c)(1) require mandatory detention for individuals who are present in the United States without being admitted or paroled *and* who have committed certain criminal offenses. 8 U.S.C. § 1226(c)(1). Yet if all noncitizens who are inadmissible are subject to mandatory detention under § 1225(b)(2) as Respondents contend, there would be no need for Congress to identify subcategories of inadmissible noncitizens who are subject to mandatory detention under § 1226(c), rendering the amendments completely redundant. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

Prolonged Detention

51. Even when the INA authorizes a noncitizen's detention, that authority is not boundless. Indeed, courts have consistently recognized that when

immigration detention becomes unreasonably prolonged, due process requires an additional bond hearing where the government must justify continued detention with clear and convincing evidence that the noncitizen poses a flight risk or danger to the community. *See, e.g.*, *Arosteguí-Maldonado*, 794 F. Supp. 3d at 939, 945.

52. To determine whether a noncitizen's detention has become unconstitutionally prolonged, courts consider: (1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; (6) the likelihood that the removal proceedings will result in a final order of removal. *See Singh v. Choate*, No. 19-cv-909, 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019).

Automatic Stays of Bond Orders

53. In recent months, even when noncitizens have managed obtain an order authorizing their release on bond, ICE consistently invokes the automatic stay provision at 8 C.F.R. § 1003.19(i)(2) to preclude the noncitizen's release.

54. On October 31, 2001, DOJ issued an interim rule that allowed INS to invoke an automatic stay in cases in which INS's decision to deny bond or set it at $10,000 or higher was reversed or amended by an immigration judge. 66 Fed. Reg. 54909 (Oct. 31, 2001).

55. DOJ later finalized the rule with several modifications. *See* 71 Fed. Reg. 57873 (Oct. 2, 2006). First, to allay concerns that "the automatic stay might be invoked by low-level employees of DHS without supervisory review, or might be invoked

without an adequate factual or legal basis," the final rule requires DHS to appeal the immigration judge's custody determination to the Board within ten business days and requires a senior legal official to approve the filing of the appeal and to certify that there is factual and legal support justifying . . . continued detention." 71 Fed. Reg. at 57874; 8 C.F.R. § 1003.6(c)(1).

56. Second, the final rule provided that the automatic stay would lapse 90 days after the notice of appeal is filed. 8 C.F.R. § 1003.6(c)(4). Yet it does not preclude DHS from then seeking a discretionary stay under the neighboring provision, 8 C.F.R. § 1003.19(i)(1). *See* 71 Fed. Reg. at 57874.

57. Third, the regulation provides specific timelines to extend the automatic stay so that DHS can seek input from the Attorney General even if the Board has authorized release. 8 C.F.R. 1003.6(d). However, the regulation does not limit the Attorney General's discretion to extend the stay further. *Id.* Thus, under the current regulations, a noncitizen could be subjected to potentially indefinite detention even if an immigration judge and the Board determine that he should be released.

58. Responding to public comments expressing concerns with the regulation's constitutionality and the potential for abuse, DOJ again emphasized that DHS "invoke[s] the automatic stay in only a select number of custody cases"—just 273 times in Fiscal Year 2004 and only 43 times in Fiscal Year 2005. 71 Fed. Reg. 57873, 57878 (Oct. 2, 2006).

59. However, DHS has abandoned its selective use of the automatic stay and has consistently invoked it, without the requisite individualized determination, to effectively overrule immigration judges who have seen fit to grant bond. In

response, courts across the country have concluded that the automatic stay provision violates the INA and/or due process. *See, e.g., Arana-Hernandez v. Baltasar*, 2026 WL 696642 (D. Colo. March 12, 2026); *Balderas Rivas v. Baltazar*, 2026 WL 444732, at *2 (D. Colo. Feb. 17, 2026); *Merchan-Pacheo v. Noem*, 2026 WL 88526 (D. Colo. Jan. 12, 2026); *Leal Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1157-59 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1189 (D. Minn. May 21, 2025); *Zabadi v. Chertoff*, 2005 WL 1514122, at *1-2 (N.D. Cal. June 17, 2005) (listing cases).

CLAIMS FOR RELIEF

COUNT ONE
Violation of the Immigration and Nationality Act
8 U.S.C. § 1226

60. Petitioner realleges and incorporates by reference the paragraphs above.

61. On July 2, 2026, an immigration judge denied H.E.P.'s request for bond, holding that he was subject to detention under § 1225(b) and therefore not eligible for bond. Yet H.E.P. is not subject to mandatory detention under § 1225(b).

62. First, H.E.P. was not placed in expedited removal proceedings nor was he "seeking admission" to the United States when ICE took him into custody on January 30, 2025.

63. Second, DHS's own paperwork demonstrates that H.E.P. is and was detained under § 1226(a). *See* Ex. B; Ex. C.

64. Neither H.E.P.'s NTA nor DHS's Form I-213 identifies him as an "arriving alien" subject to expedited removal and mandatory detention under § 1225(b)(1).

65. Per the Form I-213, H.E.P. and his family were released on an Order of Recognizance—i.e., conditional parole under § 1226(a)(2)(B).

66. Conditional parole is not available to individuals subject to detention under § 1225(b). Those noncitizens may *only* be released on humanitarian parole under § 1182(d)(5)(A).

67. Therefore, H.E.P.'s initial release was pursuant to § 1226(a), and he cannot now be detained under § 1225(b). *See Montero Cordova v. Noem*, No. 1:26-CV-00526-KWR-DLM, 2026 WL 867689, at *3 (D.N.M. Mar. 30, 2026); *Hasan v. Crawford*, 800 F. Supp. 3d 641, 654–55 (E.D. Va. 2025).

68. As DHS continues to insist that H.E.P. is detained under § 1225(b) and has not invoked any other statutory basis to justify his continued detention, the Court should order his immediate release. *See, e.g.*, *Martinez v. Noem*, No. 25-cv-1373, 2025 WL 3471575, at *6 (W.D. Tex. Nov. 26, 2025) (ordering release where Respondents have not asserted any other basis for detention beyond § 1225(b)); *see also Clayton v. Jones*, 700 F.3d 435, 443 (10th Cir. 2012) (observing that § 2243 grants courts broad discretion to "dispose of [a habeas petition] as law and justice require"); *Burton v. Johnson*, 975 F.2d 690, 693 (10th Cir. 1992) (noting that a federal court "possesses power to grant *any form of relief necessary* to satisfy the requirement of justice") (emphasis in original).

COUNT TWO
Violation of Procedural Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

69. Petitioner realleges and incorporates by reference the paragraphs above.

70. In the alternative, if the Court holds that the immigration judge's alternative holding that bond should be denied because H.E.P. poses a flight risk meets the requirements of § 1226(a), the immigration judge nevertheless violated H.E.P.'s due process rights by requiring him to bear the burden of proof.

71. To decide what process is due under the Fifth Amendment, courts consider: (1) "the private interest that will be affected by the official action"; (2) "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"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

72. In H.E.P.'s case, all three factors favor shifting the burden to the Government to justify continued detention with clear and convincing proof of flight risk or danger to the community. First, the private interest at stake could not be greater as "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). H.E.P. has been denied that freedom for sixteen months, even after an immigration judge held that he should be granted asylum.

73. Second, the risk of an erroneous deprivation is high when the burden is placed on H.E.P. to prove that he is not a flight risk or a danger to the community. It is exceedingly difficult for H.E.P. and other noncitizens to prove those negatives, particularly when they are detained with limited access to the evidence necessary

to plead their cases. Conversely, the Government can access information concerning flight risk and dangerousness through its own records and investigative tools. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183-84 (D. Colo. 2024).

74. Third, while the Government has an interest in ensuring H.E.P. appears for all necessary hearings, there are no further hearings for H.E.P. to attend. Having won asylum, his immigration court proceedings have concluded, and his attendance is unnecessary to resolve DHS's appeal from the immigration judge's asylum order. Further, nothing suggests that H.E.P. would pose a flight risk here. The immigration judge in denying release on bond, posited that he was a flight risk based on the speculative nature of the relief he sought. That relief is no longer speculative as an immigration judge granted him asylum, and he has every incentive to continue pursuing that relief before the BIA. Moreover, there is no additional administrative burden in merely shifting the burden of proof at a hearing the Government is already required to hold.

75. As all three *Mathews* factors tip in H.E.P.'s favor, the Court should declare the initial bond hearing unconstitutional and order H.E.P.'s release, or in the alternative, order a new hearing where the Government bears the burden to justify continued detention with clear and convincing evidence of flight risk or danger to the community. *See L.G.*, 744 F. Supp. 3d at 1181-85.

COUNT THREE
Violation of Procedural Due Process
Prolonged Detention

76. Petitioner realleges and incorporates by reference the paragraphs above.

77. Even if H.E.P.'s initial bond hearing complies with the INA and due process, his prolonged detention separately warrants habeas relief.

78. Each of the six *Singh* factors weighs in H.E.P.'s favor and compel the conclusion that his detention has become unconstitutionally prolonged.

79. First, H.E.P. has been detained since January 30, 2025, a total of 476 days—almost sixteen months.

80. Second, there are currently 15 BIA judges plus four temporary appellate judges working through a backlog of 220,000 cases. *See* Ex. E, Executive Office of Immigr. Rev. Adjudication Statistics. That backlog will only grow as the current administration continues its mass deportation campaign. Thus, H.E.P. is likely to languish in detention for many more months as a handful of judges work their way through a massive backlog of appeals that includes DHS's appeal of H.E.P.'s asylum grant.

81. Third, at least one court in this district has credited a noncitizen's characterization of the conditions at Denver Contract Detention Facility as "more akin to incarceration than a civil confinement." *Daley v. Choate*, No. 22-cv-3043, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023). Indeed, the facility confines up to 1,500 noncitizens in a carceral setting where detainees are subject to mismanagement, abuse, and neglect that has caused the deaths of multiple detainees at the facility. *See* Ex. E (describing deaths of multiple detainees due to inadequate medical care).

82. Fourth, H.E.P. has diligently pursued his asylum claim without employing any dilatory tactics or unnecessarily delaying the proceedings.

83. Fifth, the current delay in H.E.P.'s release flows from DHS's decision to continue fighting the immigration judge's decision to grant him asylum.

84. Finally, the likelihood that H.E.P.'s proceedings will result in a final order of removal is low. An immigration judge has already determined that H.E.P. is entitled to asylum. Further, asylum claims are inherently fact-specific, and the BIA's standard of review on such matters is highly deferential. The BIA is limited to determining whether the factual findings are clearly erroneous and may not engage in factfinding in the course of deciding appeals. *See* 8 C.F.R. § 1003.1(d)(3). Thus, it is likely that the immigration court's order will stand on appeal.

85. As the *Singh* factors tip heavily in H.E.P.'s favor, the Court should grant his release. *See A.T. v. Baltazar*, No. 26-cv-925-NYW, 2026 WL 962595, at *5 (D. Colo. Apr. 9, 2026) (ordering release of noncitizen whose detention had become unconstitutionally prolonged). Alternatively, the Court should order another bond hearing where the Government bears the burden of proving flight risk or danger by clear and convincing evidence to justify continued detention. *See Arostegui-Maldonado*, 794 F. Supp. 3d at 945 (holding that government should bear burden to show by clear and convincing evidence that continued detention is justified).

COUNT FOUR
Violation of Substantive Due Process
Arbitrary Detention

86. Petitioner realleges and incorporates by reference the paragraphs above.

87. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided,

unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original).

88. Freedom from arbitrary detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

89. H.E.P.'s continued detention five months after an immigration judge granted him asylum and sixteen months after he was initially taken into custody serves no compelling governmental interest that outweighs his "constitutionally protected interest in avoiding physical restraint." *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

90. H.E.P.'s detention is not necessary to protect the community nor is it necessary to ensure his appearance at removal proceedings that concluded on January 1, 2026.

91. His continued detention violates his substantive due process right to be free from arbitrary detention and the Court should order his release.

PRAYER FOR RELIEF

Based on the foregoing, Petitioner requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Petitioner not be removed from this District while this Petition is pending;

(3) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days, or not more than fourteen days;

(4) Declare that 8 U.S.C. § 1225 does not govern Petitioner's detention by U.S. immigration authorities;

(5) Declare that Respondents have violated Petitioner's due process rights by

denying him a constitutionally adequate bond hearing;

(6) Order Petitioner's immediate release with all of his personal property, including any driver's license, passport, employment authorization documents, and any identification cards. *See Cortes v. Guadian*, 2026 WL 327906 (D. Colo. Feb. 6, 2026).

(7) Alternatively, order that Respondents provide Petitioner with a bond hearing at which the government bears the burden of proof by clear and convincing evidence and that the bond hearing fails to comport with due process where an Immigration Judge relies solely on considerations that would not lead to an automatic denial of bond in most, if not all, cases;

(8) If a bond hearing is ordered, enjoin Respondents from invoking the automatic stay provision under 8 C.F.R. § 1003.19 if the immigration judge grants release upon payment of a monetary bond;

(9) Grant Petitioner leave to forthwith file a motion for attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*; and

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

Dated: May 21, 2026

Respectfully submitted,

/s/ Sarah L. Vuong
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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. This petition based on discussions with Petitioner and documents he has provided. Based on that evidence, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 20, 2026

Respectfully submitted,

/s/ Kevin Hirst
KEVIN HIRST