UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-2211-TPO

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.

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

For decades it has been universally understood that individuals who have entered the United States, even unlawfully, are entitled to seek release on bond absent past criminal convictions that would subject them to mandatory detention. Yet in 2025, the government abruptly reversed the statutory interpretation it embraced for decades, choosing to interpret the Immigration and Nationality Act ("INA") to mandate the detention of anyone who entered without inspection pending their removal on the theory that they remain noncitizens seeking admission and inspection by an examining immigration officer, regardless of how long they have resided in this country. The government has detained [redacted] for more than two months now under this theory, despite an overwhelming number of district court cases across the country holding the government's theory is incorrect and/or violates the noncitizen's due process rights. Because the statute

and due process principles necessitate that H.E.P. is not subject to mandatory detention, this Court should order Respondents to release him from custody, or in that alternative, order a bond hearing before a neutral arbitrator at which the government bears the burden of proof.

H.E.P. IS NOT SUBJECT TO DETENTION UNDER 8 U.S.C. § 1225(B)(2)

District courts throughout the Tenth Circuit have almost universally concluded that noncitizens like H.E.P. who have entered the United States without admission and have continued residing in the United States after entry are subject to detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2). *See, e.g.*, *Garrido v. Baltasar*, No. 26-CV-00428-TPO, 2026 WL 638362, at *3 (D. Colo. Mar. 6, 2026) ("Because neither the Supreme Court nor the Tenth Circuit have yet weighed in on this issue, this Court finds more persuasive the great weight of authority in this Circuit and throughout the country that have interpreted §§ 1225(b) and 1226(a) and have concluded that they do not support the mandatory detention of noncitizens in Petitioner's circumstances"); *Batz Barreno v. Baltazar*, --- F. Supp. 3d ---, 2026 WL 120253 (D. Colo. Jan. 15, 2026); *Orellana v. Noem*, No. 25-CV-03976-PAB, 2025 WL 3706417 (D. Colo. Dec. 22, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Ramos v. Dedos*, No. 1:25-CV-00975-MLGKRS, 2025 WL 3653928 (D.N.M. Dec. 17, 2025); *Colin v. Holt*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Cortez-Gonzalez v. Noem*, 811 F. Supp. 3d 1287 (D.N.M. 2025); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-CV01031-KG-JFR, 2025 WL 3187432 (D.N.M. Nov. 14, 2025); *Loa Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Velasquez Salazar v. Dedos*, 806 F. Supp. 3d 1231

(D.N.M. 2025); *see also Lopez-Campos v. Raycraft*,175 F.4th 713 (6th Cir. 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258, 2026 WL 1243395 (11th Cir. 2026) *Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026); *but see Buenrostro v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128, 1132–38 (8th Cir. 2026). The statute's plain text and Supreme Court precedent should compel this Court to do so again.

Section 1225(b)(2) states, "in the case of an alien who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" removal proceedings. 8 U.S.C. § 1225(b)(2). Contrary to Respondents' assertions, § 1225(b)(2) does not apply to all applicants for admission. It mandates the detention only of those who are "seeking admission" and only if an "examining immigration officer determines that [they are] not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). As several courts have acknowledged, "seeking admission" is only one requirement found in § 1225(b)(2). *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 487-88 (S.D.N.Y. 2025) (describing three "criteria": (1) that the noncitizen is an "applicant for admission"; (2) that the noncitizen is actively "seeking admission"; and (3) that the "examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'"); *see also Leonardo G.Z. v. Noem*, 25-cv-600, 2025 WL 3755590, 9 (N.D. Ok. Dec. 29, 2025). Critically, if "applicant for admission" was the same as "seeking admission," the statute would violate the rule against surplusage. *See id.*; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); *Ramirez v. Hyde*, 792 F.Supp.3d 211, 218 (D. Mass. 2025); *Quispe v. Crawford*, No. 25-cv-1471,

2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025). Thus, not all applicants for admission are subject to mandatory detention pending removal proceedings. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Respondents' interpretation also would nullify recent amendments to the INA in the Laken Riley Act, now codified within 8 U.S.C. § 1226(c). *See Hasan v. Crawford*, 800 F. Supp. 3d 641, 656 (E.D. Va. 2025). Among other things, the Laken Riley Act mandates detention for noncitizens who are subject to certain inadmissibility grounds *and* meet certain criminal criteria. 8 U.S.C. § 1226(c)(1)(E). Such a statute would be entirely redundant if a noncitizen's inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *See id.*; *Lopez Benitez*, 795 F. Supp. 3d at 484.

Respondents' reliance on *Jennings v. Rodriguez* is misplaced. *Jennings* primarily focused on the detention provisions under § 1225(b)(1), not (b)(2), and there is no claim that § 1225(b)(1) is applicable in this case. Moreover, in *Jennings*, the Supreme Court affirmed that affirmed that § 1226(a) rather than § 1225(b)(2) "applies to aliens already present in the United States." *Jennings*, 583 U.S. at 303. The Court acknowledged that "once inside the United States, aliens do not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission," but explained that "[s]ection 1226 generally governs the process of arresting and detaining *that group of aliens* pending their removal." *Id.* at 288 (emphasis added). H.E.P. belongs to "that group of aliens" and he is accordingly not subject to detention under § 1225(b)(2)(A). Indeed, Respondents admit that this case is governed by the same analysis as in this Court's decision in *Garrido v. Baltasar*, No.

26-cv-00428-TPO, 2026 WL 638362, at *3 (D. Colo. Mar. 6, 2026). Resp. at 4. There are no distinguishing facts and the Court should reach the same result here.

H.E.P.'S DETENTION VIOLATES HIS DUE PROCES RIGHTS

Additionally, Respondents' refusal to release H.E.P. on bond also violates his constitutional right to due process. Respondents argue that H.E.P. cannot challenge his bond order from July 2025, however, that bond decision suffers the same statutory and constitutional defects as ICE's current legal theory of detention. Respondents do not acknowledge nor address H.E.P.'s actual constitutional arguments in their response. This Court should therefore consider any challenge to these claims to be waived.

But even if not waived, Respondents have violated H.E.P.'s due process rights. *See Singh v. Valdez*, 2026 WL 890240, at *4 (D. Colo. Apr. 1, 2026) (recognizing that the government did "not develop a fulsome argument in response to Singh's Fifth Amendment claim and instead encourages the Court to rest its decision on the statutory interpretation question. . . . But many courts have considered procedural due process claims identical to the one Singh asserts in the Petition. Ultimately, they have concurred with the petitioner.") (collecting cases). As the Supreme Court has stressed, once H.E.P. "enter[s] the country, [his] legal circumstances change[], for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (distinguishing noncitizens arriving at our shores from those "who have never been naturalized, nor acquired any domicile or residence within the United States"). Thus, even if the Court were to accept Respondents' erroneous argument that H.E.P. is subject to § 1225(b)(2),

that statutory distinction is not determinative of the process he is due under the Constitution. Because he entered the United States over a year ago, his proceedings must "conform to traditional standards of fairness encompassed in due process of law." *Mezei*, 345 U.S. at 212.

Moreover, H.E.P.'s continued detention without the opportunity to seek release on bond is clearly prejudicial. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. Indeed, freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Accordingly, "[g]overnment detention violates th[e Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and 'narrow' nonpunitive 'circumstances' where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (emphasis in original) (internal citations omitted). Respondents have not put forth any special justification for H.E.P.'s continued detention despite holding him for over a year without an opportunity to contest his detention. And the Government's general interest in ensuring H.E.P.'s appearance at his removal proceedings and protecting the community does not outweigh his constitutionally protected interest in avoiding physical restraint, particularly where the agency and an immigration judge would necessarily consider those interests when deciding whether to set bond. *See Hasan*, 800 F. Supp. 3d at 658 ("Any interest that the federal respondents may have in securing Hasan's presence at immigration proceedings has been accounted for by the IJ's imposition of bond.").

THIS COURT SHOULD GRANT IMMEDIATE RELEASE, OR, ALTERNATIVELY ORDER A BOND HEARING AT WHICH THE GOVERNMENT BEARS THE BURDEN OF PROOF

This Court should grant the petition and order H.E.P.'s immediate release. This is the proper remedy because his detention is both unlawful and unconstitutional. *See Singh*, 2026 WL 890240, at *5 (collecting cases); *see also Hotak v. Baltazar*, 1:25-cv-556 (D. Colo. Feb. 25, 2026); *Yanez Chavez v. Baltazar*, 2026 WL 516934 (D. Colo. Feb. 26, 2026); *see also Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted Vargas v. Bondi*, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025). Moreover, as Judge Martinez recognized in *Singh*, there is "mounting evidence that bond determination hearings conducted in immigration court under § 1226(a) have preordained outcomes[.]" 2026 WL 890240, at *5. "'As a result, courts across the country have, with increasing frequency, ceased 'ordering even initial bond hearings in cases like this one involving unlawful detention under § 1225(b) because Respondents' conduct can no longer be attributed to mere negligence or ineptitude, . . . and doing so would effectively allow the Government to transform an unlawful detention into a lawful one through *post-hoc* justifications.'" *Id.* (quoting *Zheng v. Rokosky*, --- F. Supp. 3d ---, 2026 WL 800203, at *11 (D.N.J. March 23, 2026) (marks omitted). Notably, immigration judges nationwide continue to apply incorrect burdens and reach conclusions without considering all the facts and arguments presented. *See* Nicholas Nehamas, et al., *How Trump Purged Immigration Judges to Speed Up Deportations*, THE NEW YORK TIMES, April 9, 2026 (discussing how the Trump administration "reshaped the immigration bench" and that the Chief Immigration Judge receives "daily reports about bond rulings" and has "emailed judges asking for an explanation about their decisions to grant bond." "One current judge

said 'the pressure to deny bond is overt.'"). But such orders "fail[] to comport with due process" if "the Immigration Judge relies on considerations that would lead to an automatic denial of bond in almost all cases, for such a hearing is not individualized or rationally related to whether a petitioner is a flight risk" is appropriate and necessary where immigration judges throughout the country are determined to deny bond on these grounds. *Sierra-Cerritos v. Simon*, No. 1:25-cv-2380 (RDA/LRV) (E.D. Va. March 18, 2026), ECF No. 17, Order; *see also D.Y.E.H. v. Warden, Irwin Detention Center, et al.*, No. 7:25-cv-201 (M.D. Ga. Apr. 6, 2026), slip op. at 9 ("IJ Doughty's decision equates the mere fact of being in removal proceedings with a categorical presumption of flight risk, which is the opposite of an individualized assessment."); *Mendez Trigueros v. Guadian*, No. 1:26-cv-205 (AJT-WPB) (E.D. Va. Feb. 18, 2026), ECF No. 13, Order. Because such orders are routine, H.E.P. asks this Court to order his immediate release rather than a bond hearing before an immigration judge. *Singh*, 2026 WL 890240, at *5. Notably, H.E.P. should be eligible for release; he is not a danger to the community, and an immigration judge has found him eligible for asylum, so there is no reason for him to abscond. And Respondents have provided no basis—other than their unlawful policy—to keep him detained.

Alternatively, if this Court declines to order immediate release, the Court should order a bond hearing at which the government bears the burden of proof by clear and convincing evidence. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1187 (D. Colo. 2025); *Garrido v. Baltasar*, No. 26-CV-00428-TPO, 2026 WL 638362, at *4 (D. Colo. Mar. 6, 2026) ("The government will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk."). This standard is

proper because the clear and convincing standard applies to civil detention, like here, where liberty is at stake. *Id.* While H.E.P. submits the clear and convincing is proper here, the burden on the government is critical because "these are not normal circumstances." *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (recognizing that the case involves a continuing constitutional violation and shifting the burden to the government at a bond hearing "likely will reduce the risk of the continuing erroneous deprivation of Petitioner's liberty interests). Because Respondents have already made clear their intentions to keep H.E.P. in custody even after he has been granted asylum, this Court should place the burden on Respondents to justify that position to ensure it is Constitutionally compliant. Thus, if the Court orders a bond hearing rather than immediate release, it should place the burden on the government to demonstrate that continued detention is warranted because H.E.P. is either a danger to the community or a flight risk.

CONCLUSION

For the foregoing reasons, H.E.P. requests the Court grant his habeas petition and order his release or, alternatively, that he is entitled to a bond proceeding before an immigration judge, at which the government bears the burden of proof, to consider whether he would be a flight risk or danger to the community.

June 12, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing pleading complies with Federal and Local rules, as it contains 2,449 words and is less than 10 pages.

/s/ Sarah L. Vuong
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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Sarah L. Vuong
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