UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00897

EDDY DESIRE RUKUNDO

Petitioner,

v.

DAWN CEJA, Warden of Denver Contract Detention Facility
ROBERT GUADIAN, Director, Denver Field Office, U.S. Immigration and Customs Enforcement
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
PAMELA BONDI, U.S. Attorney General
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security;

Respondents

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Eddy Desire Rukundo is a 34-year-old citizen and national of Burundi who has resided in the United States since 2013, when he was 21 years old. In his native Burundi, Petitioner had been imprisoned and beaten on account of his ethnicity and family of origin.
2. Petitioner made a timely application for asylum in 2014. That application was denied by the Immigration Judge (IJ), appealed to the Board of Immigration Appeals (BIA) and remanded to the IJ for further proceedings on February 27, 2026.
3. Petitioner has been detained by Immigration and Customs Enforcement (ICE) since August 18, 2024, a total of approximately 18 months.
4. On March 31, 2025, an Immigration Judge denied him release on bond.
5. Accordingly, to vindicate Petitioner's statutory, constitutional and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus to ensure his continued health and liberty. Petitioner asks this Court to find that the physical detention of the Petitioner is unlawful and order ICE to release him.

JURISDICTION

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

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

VENUE

9. Venue is proper because Petitioner is in the custody of the Immigration and Customs Enforcement in Aurora, Colorado, which is within the jurisdiction of this District.

10. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States and Petitioner resides in this District no real property is involved in this action; also a substantial part of the events or omissions giving rise to their claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

12. 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

13. Petitioner is a Burundian citizen who has resided in the United States for thirteen years since fleeing persecution in his home country. He applied for asylum and related relief; his application is currently pending before the Immigration Court after remand from the BIA. He is under the direct control of Respondents and their agents.

14. Respondent Dawn Ceja is sued in her official capacity as the Warden of the Denver Contract Detention Facility, which detains individuals suspected of civil immigration violations pursuant to a contract with ICE. She is the immediate physical custodian of Petitioner.

15. Respondent Robert Guadian is sued in his official capacity as the Acting Director of the Denver Field Office of U.S. Immigration and Customs Enforcement. Respondent Guadian is a legal custodian of Petitioner and has authority to release him.

16. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. In this capacity, Respondent Lyons is the head of the federal agency responsible for all immigration enforcement in the United States.

17. Respondent Pamela Bondi is sued in her official capacity as the U.S. Attorney General at the Department of Justice. In this capacity, she oversees the Immigration Courts, which have the power to order Petitioner released on bond or conditions of supervision.

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

STATEMENT OF FACTS

19. Petitioner Eddy Desire Rukundo is a 34-year-old citizen and national of Burundi who entered the United States in 2013 with an F-1 student visa and has thereafter remained.
20. In 2012 in Burundi, Petitioner was held in prison for two weeks without charges, during which he endured beatings approximately six times. During the beatings, his persecutors made reference to his ethnicity.
21. Within a year of his entry, Petitioner filed a timely application for asylum and related protections with U.S. Citizenship and Immigration Services (USCIS).
22. On September 7, 2021, USCIS referred his application for asylum and related relief to the Immigration Court, finding that Petitioner could not establish refugee status because he was also a "a citizen or national of another country in addition to the country of persecution."
23. On the Notice to Appear in Removal Proceedings (NTA), USCIS charged that Petitioner was a national of Rwanda in addition to Burundi.

24. Around the time of Petitioner's referral to removal proceedings, Petitioner began to have run-ins with the law, which are recounted here followed by each count's legal outcome. First, in August of 2021 he was charged with operating under the influence (dismissed), failing to notify of a motor vehicle accident (dismissed), and driving to endanger (convicted). In August of 2022, he was charged with drinking in public (dismissed). In May of 2023, he was charged with refusing a breathalyzer, also referred to as an OUI-No Test (dismissed), violating conditions of release (dismissed) and operating under the influence (convicted). Finally, there was a February 2024 charge for violating conditions of release by consuming alcohol (convicted).

25. All convictions Petitioner has accrued are for misdemeanors in the state of Maine. Driving to endanger is a class E crime (punishable by a maximum of six months) and is defined as when a "person drives a motor vehicle in any place in a manner that endangers the property of another or a person, including the operator or passenger in the motor vehicle being driven." 29-A MRS §2413; 17-A MRS §4-A (defining punishment of crimes by class). The OUI was a class D crime. In Petitioner's case, he was found asleep in a vehicle that was running. Class D crimes in Maine are punishable by up to 364 days and are thus misdemeanors. 29-A MRS §2411. The violation of conditions of release is a class E crime. 15 MRS §1092.

26. In Petitioner's case, the driving to endanger charge was resolved with a 150-day license suspension and a fine. The OUI charge was resolved with a suspension of

his license and a fine. The violation of the conditions of release was resolved with a fine. At no time did the State of Maine sentence Petitioner to prison for these criminal matters. At no time did any member of the public come to any harm as a result of these matters.

27. In the interim, Petitioner was represented before the Immigration Court by Attorney Felix Hagenimana. Attorney Hagenimana filed pleadings conceding that Petitioner was a citizen of both Burundi and Rwanda; he did not speak with his client prior to making this admission. Petitioner is only a citizen of Burundi.

28. On August 27, 2024, Immigration and Customs Enforcement (ICE) took Petitioner into custody. He has addressed his removal proceedings since then while detained.

29. The Immigration Court scheduled Petitioner for a hearing on the merits of his application for asylum and related relief, to be held on December 20, 2024. Prior to that hearing date, Petitioner hired new counsel.

30. On December 10, 2024, new counsel (same as undersigned counsel) entered her appearance for Petitioner before the Immigration Court and sought a continuance for preparation. Attorney Hagenimana simultaneously sought to withdraw.

31. The Immigration Judge re-set the matter to May 9, 2025. The Court later, on its own, re-set the matter again to May 20, 2025.

32. On March 30, 2025, represented by separate counsel, Attorney Stephen Lagana, Petitioner requested bond before the Immigration Court in Chelmsford, MA. The Immigration Judge denied bond, finding that the DHS had met its burden to

demonstrate that Petitioner was a danger to the community based on police reports and summary information it had submitted at oral argument. *See* Exhibit A, Government's Submission of Evidence for Respondent's Custody Redetermination Hearing. In denying bond, the Immigration Judge made reference to several cases where the burden was on the noncitizen to demonstrate eligibility for bond. That decision was taken on appeal to the BIA, which affirmed the decision of the Immigration Judge.

33. Ahead of the merits hearing, Petitioner, through counsel, submitted additional supporting evidence, including extensive country conditions reports and an affidavit from an expert witness, attesting that Petitioner was not a citizen of Rwanda.

34. An individual merits hearing was held before the Immigration Judge on May 20, 2025. Petitioner and his mother testified.

35. The Immigration Judge issued a decision the same day, denying all relief. She found that Petitioner was not a citizen of Rwanda, only Burundi. She found that Petitioner and his mother were both credible witnesses. She further found that Petitioner had met his burden to demonstrate that he was the victim of past persecution, with a nexus to his ethnicity and family membership. A finding of past persecution entitles an applicant for asylum to a presumption that he has a well-founded fear of future persecution. However, the Immigration Judge then determined that the Department of Homeland Security (DHS) had "met its burden" to rebut that presumption by establishing changed circumstances. The DHS had

submitted no evidence and made no argument regarding changed circumstances. The Immigration Judge also denied the asylum application in her discretion.

36. Petitioner, through counsel, took a timely appeal of that decision on June 18, 2025, raising several substantial legal issues and faulting the IJ for failing to make several necessary findings regarding the potential for future persecution.

37. On June 20, 2025, Petitioner was transferred by ICE from New Hampshire to Colorado.

38. On August 11, 2025, the BIA provided transcripts and issued a briefing schedule. Petitioner filed a timely brief. The DHS did not file any brief.

39. On February 27, 2026, the BIA remanded the matter to the IJ, finding that her determination that conditions had changed in Burundi was unsupported. *See* Exhibit B, Order of the Board of Immigration Appeals.

40. Petitioner remains detained at the Denver Contract Detention Facility, operated by the GEO Group for ICE, in Aurora, Colorado.

41. Petitioner asserts the following as concerns of his conditions of confinement. *See* Exhibit C, Declaration of Eddy Desire Rukundo. He is held in his cell approximately 12 hours per day. *Id.* The cell houses four detainees; it contains four beds, arranged as two bunk-style beds, which are approximately 4 feet apart. *Id.* The room contains one chair. *Id.*

42. Over the winter, Petitioner engaged in a verbal disagreement with his cell mate. *Id.* There was no violence involved. *Id.* Petitioner was taken to isolation for seven

days, where he was only allowed out of the isolation room for 10 minutes per day to shower. *Id.*

43. Petitioner asserts that his mental health is extremely poor, and that his conditions inspire constant memories of his imprisonment and abuse in Burundi. *Id.*

44. He further asserts that the medical care is sub-standard. *Id.* Specifically, he needed teeth removed. *Id.* His face became swollen and he was prescribed 3000mg of ibuprofen per day and 600 mg of Tylenol at night, but it was insufficient to address the pain he suffered. *Id.* It took two months to get an appointment with a dentist, who then removed only one problematic tooth, but not the other. *Id.* The dentist only comes to the facility one every few months, so his other tooth remains unaddressed. *Id.*

45. There are no alcoholics anonymous programs available in the facility. *Id.* The mental health therapist is only available to those who express suicidal ideation. *Id.*

46. There have been HVAC and water issues at the facility that substantially interfere with the comfort of detainees. *Id.* For several days in December, the hot air was so intense that Petitioner did not sleep for 4 days. *Id.* For a period of time, no hot water was available for bathing, only freezing cold water. *Id.* With an adjustment to the HVAC and with the change in weather, the rooms are now extremely cold, but Petitioner is afforded only one blanket, which is insufficient. *Id.*

47. Petitioner fears for his life in Burundi and has asserted that he will continue to fight his case. *Id.* If the IJ denies relief again, he plans to appeal to the Board of Immigration Appeals. *Id.*

LEGAL FRAMEWORK

48. Petitioner's detention is governed by 8 U.S.C. § 1226, as his removal proceedings are ongoing.

49. When faced with the issue of a noncitizen facing prolonged detention, the District Court

> looks to several factors to determine whether detention is so unduly prolonged as to become unreasonable or unjustified in a particular case: … (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; and (6) the likelihood that the removal proceedings will result in a final order of removal.

Singh v. Choate, No. 19-CV-00909-KLM, 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019), citing *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858-59 (D. Minn. 2019); *see also Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274, 278 (3d Cir. 2018).

50. Moreover, this Court has jurisdiction to review whether the Immigration Judge's dangerousness finding. *Martinez v. Clark*, 144 S. Ct. 1339 (2024) (vacating and remanding Ninth Circuit decision finding no jurisdiction to review dangerousness determination in denying bond); *see also* *Picado v. Hyde*, No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *5 (D.R.I. Feb. 9, 2026)("Accordingly, because the IJ's finding of dangerousness is a finding based on the application of a statutory legal standard to an established set of facts, it is not a "discretionary judgment" barred by Section 1226(e) and is also reviewable by this Court as a "question of law.")

51. Whenever the government detains or incarcerates someone, it has an affirmative duty to provide conditions of reasonable health and safety. As the Supreme Court has explained, "when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As a result, the government must provide those in its custody with "food, clothing, shelter, medical care, and reasonable safety." *Id.* at 200.

52. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment's prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. The Eighth Amendment requires that "inmates be furnished with the basic human needs, one of which is 'reasonable safety.'" *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (quoting *DeShaney*, 489 U.S. at 200). Accordingly, "[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Id.*

53. These principles also apply in the context of immigration detention. Immigrant detainees, even those with prior criminal convictions, are civil detainees held pursuant to civil immigration laws. *Zadvydas*, at 690.

54. Because detained immigrants are civil detainees, their constitutional protections while in custody are derived from the Fifth Amendment, which provides protections even greater than the Eighth Amendment. The Eighth Amendment, which applies

to persons convicted of criminal offenses, allows punishment as long as it is not cruel and unusual. But the Fifth Amendment's due process protections do not allow punishment at all. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished.").

55. The Due Process Clause protects detainees not only from conduct amounting to deliberate indifference, but also from objectively unreasonable conduct that creates a risk to their safety. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472-73 (2015); *Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1120, 1122-25 (9th Cir. 2018). The language of *Kingsley* is broad – applying not only to use of excessive force by the government, but to government action generally, including actions involving medical treatment. *See Gordon*, 888 F.3d at 1124; *see also Couchon v. Cousins*, 2018 WL 4189694, at *6 (D. Mass. Aug. 31, 2018) (noting that there is "much to be said" for the reasoning that extends *Kingsley* to conditions of confinement cases).

56. Moreover, because civil detention is governed by the Fifth Amendment rather than the Eighth Amendment, a condition of confinement for a civil immigration detainee violates the Constitution "if it imposes some harm to the detainee that significantly exceeds or is independent of the inherent discomforts of confinement and is not reasonably related to a legitimate governmental objective or is excessive in relation to the legitimate governmental objective." *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016), *aff'd sub*

nom. Doe v. Kelly, 878 F.3d 710 (9th Cir. 2017) (citing and relying on *Bell v. Wolfish*, 441 U.S. 520, 535, 538 (1979)).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

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

58. Petitioner asserts that his prolonged detention violates the guarantees of the Fifth Amendment, as analyzed under the *Singh* factors. He has been detained for over 18 months. He plans to continue to fight for asylum and related relief, rendering future detention a certainty. The conditions of his detention are deplorable. In removal proceedings, his counsel sought a single continuance since his detention, to allow for her preparation. The government did not delay the case. It is likely that removal proceedings will not result in a final order of removal, as Petitioner was found to have suffered past persecution, successfully argued that the IJ committed error before the BIA, and the case is now again before the IJ.

59. Petitioner further asserts that the Immigration Judge's decision on dangerousness was erroneous and, upon review from this court, should be reversed. the evidence submitted by DHS was insufficient to meet its burden, and the Immigration Judge did not meaningfully consider alternatives to imprisonment.

60. Moreover, the Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it subjects civil

detainees to cruel treatment and conditions of confinement that amount to punishment or does not ensure those detainees' safety and health.

61. Notwithstanding some criminal history, Petitioner was never sentenced to prison by a state criminal court. Nevertheless, he has spent over 18 months detained in conditions worse than criminal confinement.

COUNT TWO

Administrative Procedure Act

62. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A court reviewing agency action "must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"; it must "examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

63. The agency's finding that the DHS had met its burden to demonstrate that Petitioner is a danger to the community cannot be sustained where only paltry evidence was submitted, where there was no evidence that any member of the community had ever been harmed, and where alternatives to detention (such as allowing Petitioner to be release pursuant to a treatment program) were not considered.

PRAYER FOR RELIEF

Wherefore, Petitioners respectfully request this Court to grant the following:

(1) Assume jurisdiction over this matter;

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

(3) Order that Defendants not remove Petitioner from the State of Colorado;

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act.

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

(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.

Respectfully Submitted
Eddy Rukundo, Petitioner
By and through:

s/ Annelise M. Jatoba de Araujo

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Dated: March 5, 2026

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

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

Dated this 5th day of March, 2026

s/ *Annelise M. Jatoba de Araujo*
Annelise M. Jatoba de Araujo