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

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| ADILET TOROBEKOV,<br><br>Petitioner,<br><br>v.<br><br>JUAN BALTAZAR, Warden, Denver Contract Detention Center; ROBERT HAGAN, Director, ICE Denver Field Office; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, KRISTI NOEM, Secretary of the Department of Homeland Security; PAMELA JO BONDI, Attorney General of the United States, *in their official capacities*,<br><br>Respondents. | Case No.: 1:26-cv-1106 |

**PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Adilet Torobekov (A-235-625-061) ("Petitioner"), by and through undersigned counsel, hereby challenges his unlawful detention, which rests entirely on a statutory misclassification that is unsupportable on its face. Petitioner is not an individual seeking admission at the border today; rather, he is a person who was formally inspected and admitted into the United States on December 4, 2024, at a designated port of entry, pursuant to a valid B-2 nonimmigrant visitor visa, and was

issued a Form I-94 (Admission Record No. 291409187A4) by the United States Customs and Border Protection documenting his lawful admission. Petitioner thereafter established residence in Portland, Oregon, filed a timely application for asylum, and was granted Employment Authorization by USCIS as a recognized asylum applicant. Yet Respondents have detained him under 8 U.S.C. § 1225(b) as if he were an "arriving alien" standing at the threshold of entry — a legal classification that is factually and legally impossible given that he was formally admitted into the United States.

## INTRODUCTION

1. Petitioner Adilet Torobekov is a native and citizen of Kyrgyzstan, born on [redacted] On December 4, 2024, he lawfully entered the United States at a designated port of entry, presenting a valid B-2 nonimmigrant visitor visa, and was duly inspected by a U.S. Customs and Border Protection officer. He was formally admitted into the United States with an authorized period of stay through June 3, 2025, as reflected on Form I-94 Admission Record No. 291409187A4, Class of Admission B2.

2. Petitioner's admission into the United States constitutes "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer" within the meaning of 8 U.S.C. § 1101(a)(13)(A). He is, by statutory definition, an "admitted" alien — not an "applicant for admission." Section 1225(b) applies exclusively to noncitizens seeking admission who have not been admitted. It does not and cannot apply to Petitioner.

3. Following his lawful entry, Petitioner established residence in [redacted] Oregon. At the time of filing, Petitioner resided at [redacted] He subsequently relocated to [redacted] Oregon, where he established residence at [redacted] Petitioner filed his asylum application

affirmatively with the USCIS Chicago Asylum Office — a process that requires voluntary, proactive engagement with federal immigration authorities — on March 6, 2025, bearing Receipt Number [redacted]. The application remains pending before the Chicago Asylum Office; no interview has been scheduled and no final decision has been issued. No final order of removal has been entered against Petitioner. Petitioner was granted Employment Authorization ([redacted]) by the United States Citizenship and Immigration Services as a recognized asylum applicant — the Government itself acknowledged Petitioner's compliant status by issuing him work authorization valid through September 1, 2030. He also obtained an [redacted] Driver's License, further evidencing his establishment of lawful residence in the United States.

4. Despite his lawful admission, his pending asylum proceedings, his valid employment authorization, and his established community ties, Petitioner was arrested by agents of U.S. Immigration and Customs Enforcement on March 8, 2026, at approximately 10:00–11:00 a.m., at the weigh station located at 4101 I-25, Cheyenne, Wyoming 82007. Following his arrest, Petitioner was transported to a temporary holding facility, where he remained in isolation for approximately four days. He was thereafter transferred to the Denver Contract Detention Facility located at 3130 N. Oakland Street, Aurora, Colorado 80010, where he remains detained without access to any bond hearing or individualized custody determination.

5. Respondents have classified Petitioner's detention as arising under 8 U.S.C. § 1225(b), treating him as an "applicant for admission" subject to mandatory detention. This classification is legally untenable. A person who was inspected at a port of entry, presented valid travel documents, was authorized to enter by an immigration officer, and was issued

a Form I-94 documenting that admission has been "admitted" within the unambiguous meaning of 8 U.S.C. § 1101(a)(13)(A). Such a person cannot simultaneously be an "applicant for admission" as defined by 8 U.S.C. § 1225(a)(1), which is limited to noncitizens "who ha[ve] not been admitted." Petitioner has been admitted. The mandatory detention provision of § 1225(b) is therefore inapplicable as a matter of statutory text.

6. This Court has squarely and repeatedly rejected the Government's effort to apply § 1225(b) to noncitizens residing in the interior of the United States. See *Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Mendoza Gutierrez* v. *Baltasar*, No. 25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025). Petitioner's case presents an even stronger basis for relief than the EWI cases this Court has previously resolved in petitioners' favor, because Petitioner was formally admitted — not merely paroled — into the United States.

7. Petitioner does not seek a bond hearing as his primary remedy. The evidence before this Court, including the Declaration of [redacted] — a former ICE legal counsel and Special Assistant United States Attorney with over two decades of immigration enforcement experience — establishes that immigration judges across the country have systematically denied bond in post-habeas proceedings regardless of the merits of individual cases. Mr. Artieda documents a pattern of pretextual and legally insufficient rationales deployed to deny bond en masse in cases where federal courts have ordered individualized custody review. Subjecting Petitioner to a bond hearing conducted within this deficient framework would provide no meaningful protection for his constitutional rights. Petitioner accordingly requests immediate release as the only remedy adequate to cure the constitutional and statutory violation. In the alternative, should this Court

determine that a bond hearing is the appropriate initial remedy, Petitioner requests that this Court expressly hold that the burden of proof rests with the Government — not Petitioner — to demonstrate by clear and convincing evidence that continued detention is justified.

8. Petitioner respectfully requests that this Court find his detention unlawful under 8 U.S.C. § 1225(b), order his immediate release, or in the alternative, direct that Respondents provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within five business days, at which the Government must bear the burden of demonstrating by clear and convincing evidence that continued detention is necessary to ensure appearance at proceedings or to protect the community.

## PARTIES

9. Petitioner Adilet Torobekov is a native and citizen of Kyrgyzstan, born on [redacted] He was formally admitted into the United States on December 4, 2024, at a port of entry, pursuant to a valid B-2 nonimmigrant visitor visa, under Form I-94 Admission [redacted] with authorized stay through June 3, 2025. He established residence at [redacted] having previously resided at [redacted] t the time he filed his asylum application. He filed a Form I-589, Application for Asylum and for Withholding of Removal, with the USCIS Chicago Asylum Office on March 6, 2025, bearing Receipt Numbe[redacted] which remains pending. He was issued Employment Authorization Document (EAD) ([redacted] valid September 2, 2025 through September 1, 2030, by USCIS as a recognized asylum applicant. He is currently detained at the Denver Contract Detention Facility, 3130 N. Oakland Street, Aurora, Colorado 80010.

10. Respondents Juan Baltazar, Warden of the Denver Contract Detention Center; Robert Hagan, Director of the ICE Denver Field Office; Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security; and Pamela Jo Bondi, Attorney General of the United States, are all sued in their official capacities.

## JURISDICTION

11. This Court has jurisdiction over this Petition pursuant to 28 U.S.C. § 2241(c)(3), which authorizes federal courts to grant writs of habeas corpus to persons "in custody in violation of the Constitution or laws or treaties of the United States." The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). Noncitizens may challenge the lawfulness of their immigration detention through habeas proceedings. Zadvydas v. Davis, 533 U.S. 678, 687–88 (2001); *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025).

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution, and under 28 U.S.C. § 1331 because this action arises under federal law. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

## VENUE

13. Venue is proper in this Court because Petitioner is physically detained within the District of Colorado at the Denver Contract Detention Facility, 3130 N. Oakland Street, Aurora, Colorado 80010, which is located within this District. The immediate custodian responsible

for Petitioner's confinement is located within this District. See Rumsfeld v. Padilla, 542 U.S. 426, 443 (2004).

14. This Court has exercised habeas jurisdiction over materially identical statutory challenges to § 1225(b) mandatory detention, rejecting arguments that such review is precluded. See *Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025).

## REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the respondents "forthwith," unless 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).

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. Habeas corpus is "perhaps the most important writ known to 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). "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).

## LEGAL FRAMEWORK

### A. The INA's Three Detention Frameworks

17. The Immigration and Nationality Act ("INA") prescribes three basic detention frameworks applicable to noncitizens during the removal process.

18. First, 8 U.S.C. § 1226 governs the detention of noncitizens placed in standard removal proceedings before an Immigration Judge ("IJ") under 8 U.S.C. § 1229a. Noncitizens detained pursuant to § 1226(a) are entitled to an individualized custody determination, including the opportunity for release on bond or conditional parole. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Mandatory detention under § 1226(c) applies only to a narrow category of individuals with specified criminal histories.

19. Second, the INA provides for mandatory detention under 8 U.S.C. § 1225(b), which applies exclusively to "applicants for admission" who are actively "seeking admission" at a port of entry or who were apprehended at or shortly after entry, before they have been admitted or paroled into the United States. Section 1225(b)(2)(A) mandates detention where "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court confirmed that § 1225(b) "applies primarily to aliens seeking entry into the United States." Jennings v. Rodriguez, 583 U.S. 281, 285 (2018).

20. Third, 8 U.S.C. § 1231(a) authorizes detention of noncitizens subject to a final order of removal.

**B. Petitioner Was Formally "Admitted" and Cannot Be an "Applicant for Admission" Under § 1225(b)**

21. The dispositive legal question is simple and resolved by the statutory text. Section 1225(a)(1) defines "applicant for admission" as "an alien present in the United States who

has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). "Admission" and "admitted" are defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

22. Petitioner entered the United States on December 4, 2024, at a designated port of entry, presenting a valid B-2 nonimmigrant visitor visa. He was inspected by a CBP officer and formally admitted, as reflected on Form I-94 A[redacted] of Admission B2. That admission satisfies the statutory definition of § 1101(a)(13)(A) in full: it was a lawful entry, it followed inspection by an immigration officer, and it was authorized. Accordingly, Petitioner was "admitted" within the unambiguous meaning of the INA.

23. Because Petitioner has been "admitted," he falls entirely outside the definition of "applicant for admission" under § 1225(a)(1), which is expressly limited to noncitizens who have "not been admitted." He is therefore not subject to the mandatory detention provision of § 1225(b)(2)(A) by any reading of the statutory text. The Government's invocation of § 1225(b) to detain Petitioner rests on a legal impossibility.

24. This statutory distinction is decisive and dispositive. Unlike noncitizens who entered without inspection (EWI) or who entered on humanitarian parole — and whose status as "applicants for admission" under § 1225(a)(1) may require further analysis of the "seeking admission" requirement — admitted nonimmigrants fall entirely outside the § 1225(a)(1) definition. No further inquiry into the "seeking admission" language of § 1225(b)(2)(A) is necessary, because Petitioner does not meet the threshold requirement of being an

"applicant for admission" in the first instance. The mandatory detention provision simply does not reach him.

25. Noncitizens who were admitted into the United States but later became removable — including those who overstayed their authorized period of admission — are subject to removal under 8 U.S.C. § 1227, not § 1225. Their detention pending those proceedings is governed by 8 U.S.C. § 1226(a), which entitles them to individualized custody review and a bond hearing. The INA's structural distinction between § 1225 (applicable to those seeking admission) and § 1227 (applicable to those already admitted) confirms that Petitioner's detention must be governed by § 1226(a).

**C. This Court's Settled Precedent Requires § 1226(a) To Apply**

26. This Court has repeatedly and unequivocally rejected the Government's attempt to apply § 1225(b) mandatory detention to noncitizens residing in the interior of the United States. In Hernandez v. Baltazar, No. 25-cv-03094-CNS, 2025 WL 2996643, at *3 (D. Colo. Oct. 24, 2025), this Court held that when 8 U.S.C. §§ 1225 and 1226 are read together, they "cover [noncitizens] presenting at arrival (under § 1225) and then everybody else (under § 1226)." The Court held that mandatory detention under § 1225(b)(2)(A) requires not merely that the noncitizen be an "applicant for admission" but also that the noncitizen be actively "seeking admission" — a condition that persons residing in the interior of the country do not satisfy.

27. This Court reaffirmed the same conclusion in *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720-RMR, 2025 WL 2962908, at *5 (D. Colo. Oct. 17, 2025), holding that "a proper understanding of the relevant statutes, in light of their plain text, overall structure, and

uniform case law interpreting them, compels the conclusion that § 1225's provision for mandatory detention of noncitizens 'seeking admission' does not apply to someone like [petitioner], who has been residing in the United States." Further applications of this holding followed in subsequent decisions of this Court. See also No. 1:25-cv-03548-SKC (D. Colo. Jan. 29, 2026); No. 1:25-cv-04069-PAB (D. Colo. Jan. 13, 2026); No. 1:25-cv-03697-PAB (D. Colo. Dec. 18, 2025).

28. Petitioner's case presents an even stronger basis for § 1226(a) protection than the EWI cases this Court has already resolved in petitioners' favor. In those cases, this Court had to analyze whether a noncitizen who entered without inspection and had resided in the interior for an extended period was nonetheless "seeking admission" within § 1225(b)(2)(A). Here, no such analysis is required. Petitioner was formally admitted by an immigration officer under § 1101(a)(13)(A) and therefore does not meet the threshold statutory definition of "applicant for admission" at all. The result under § 1226(a) follows a fortiori from this Court's existing precedent.

**D. The Exhaustion Requirement Does Not Apply and Bond Proceedings Would Be Futile**

29. Petitioner is not required to exhaust administrative remedies before seeking habeas relief. The threshold question — whether § 1225(b) may lawfully be invoked to detain a formally admitted nonimmigrant — is a pure question of statutory and constitutional law that the BIA lacks authority to resolve. The Sixth Circuit has held that due process challenges to the structural framework of detention "generally do not require exhaustion" because "the BIA lacks authority to review constitutional challenges." *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006). Similarly, courts in this Circuit have

repeatedly excused exhaustion where the constitutional question presented cannot be addressed by the administrative tribunal. *See* Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025) ("Exhaustion is excused . . . because any administrative appeal would have been futile and unable to address [Petitioner's] substantial constitutional claims.").

30. Even if the Court were to treat the exhaustion question as a matter of prudential discretion, the circumstances of this case compel its waiver. The dramatic surge in habeas corpus petitions filed in this and other federal district courts since early 2026 is not a coincidence — it reflects a documented, nationwide collapse of the administrative bond process as a meaningful check on detention. At the core of this collapse is a structural defect that no administrative tribunal can cure: immigration judges continue to apply an unconstitutional burden of proof that the overwhelming majority of federal courts — including this Court — have repeatedly held violates the Fifth Amendment's Due Process Clause.

31. Under BIA precedent, specifically *In re Guerra*, 24 I&N Dec. 37, 40 (BIA 2006), the burden of proof at § 1226(a) bond hearings is placed on the detainee. Under that standard, the Government "need not show anything to justify incarceration for the pendency of removal proceedings, no matter the length of those proceedings." *Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020). This is the standard that immigration judges apply in the absence of an explicit federal court directive to the contrary. It is the standard that Petitioner would face if directed to an immigration court bond hearing. And it is a standard that, as the First, Second, and Ninth Circuits have held, and as this Court's sister courts have overwhelmingly concluded, violates the Due Process Clause. *See Hernandez-*

*Lara v. Lyons*, 10 F.4th 19, 31 (1st Cir. 2021); *Velasco Lopez*, 978 F.3d at 850; *German Santos v. Warden*, 965 F.3d 203, 213 (3d Cir. 2020); *Soto-Medina v. Lynch*, No. 1:25-cv-1704 (W.D. Mich. Jan. 21, 2026); *Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024). Yet immigration judges — bound by BIA precedent — continue to conduct bond hearings under the Guerra standard, placing the burden on the detainee, unless a specific federal court order in the individual case explicitly directs otherwise.

32. This is not a theoretical problem. It is the lived reality of every detained noncitizen who seeks a bond hearing without a prior federal court order expressly overriding BIA precedent. The constitutional standard recognized by dozens of federal courts does not automatically apply in immigration court bond proceedings; it applies only when federal courts intervene and impose it by order. A detainee who goes to the immigration court first — without a federal habeas order — is subject to a constitutionally defective process from the outset. Directing Petitioner to pursue that avenue first would require him to participate in a proceeding that violates the Due Process Clause, suffer a predictable denial under an unconstitutional standard, and only then return to this Court. That is not exhaustion — it is an invitation to irreparable constitutional harm.

33. The futility of administrative bond proceedings is further and independently established by the Declaration of Jorge E. Artieda, Esq., submitted as Exhibit 6 to this Petition. Mr. Artieda is a former ICE legal counsel, former Special Assistant United States Attorney, and attorney with over two decades of experience in immigration enforcement and detention litigation. *See* Artieda Decl. ¶¶ 1–4. He submits that beginning in early January 2026, immigration judges — including in post-habeas cases where federal courts had already ordered individualized bond hearings with the burden placed explicitly on the

Government — began systematically denying bond regardless of the evidence, or rather, regardless of the absence of evidence. *Id.* ¶¶ 8–11.

34. Mr. [redacted]ocuments the specific pretextual rationales that immigration judges have deployed to deny bond in cases where the Government presented no meaningful evidence to justify continued detention: characterizing the "speculative" nature of pending relief applications as evidence of flight risk; treating the absence of a financial sponsor as dispositive of flight risk even where strong community ties, family presence, and compliance history exist; treating civil immigration status violations common to virtually every detained noncitizen as evidence of dangerousness; relying on the bare fact of an overstayed visa or presence without lawful status as, in itself, establishing flight risk — a rationale that, if consistently applied, would make bond impossible for every detained noncitizen in removal proceedings. *Id.* ¶ 17. These rationales, Mr. [redacted]concludes, "do not appear to be grounded in legitimate risk assessment" but rather constitute pretexts "designed to ensure denial of bond regardless of the individual facts of each case." *Id.* ¶ 18.

35. Mr. [redacted]further documents that this pattern has been corroborated by immigration attorneys practicing across multiple districts and before multiple immigration judges, confirming that it is not the product of individual judicial discretion but reflects a coordinated institutional posture. *Id.* ¶¶ 25–28. The bond hearings being provided in this environment appear, in his professional assessment, to be "perfunctory exercises designed to create a veneer of due process while ensuring predetermined outcomes" — what he characterizes as "illusory remedies." *Id.* ¶¶ 23, 31. In his view, the bond denials "do not appear to be genuine adjudications" but rather "a systematic effort to nullify the

constitutional protections that federal courts have recognized and enforced through habeas corpus." *Id.* ¶ 32.

36. The volume of habeas corpus petitions filed in this and other federal district courts is itself evidence of the administrative process's failure. Dozens of federal courts — including this Court — have intervened to order bond hearings or immediate release because the immigration detention system, operating without meaningful judicial supervision, cannot reliably protect the constitutional rights of detainees. These courts do not grant habeas petitions as a matter of course; they do so because the facts presented in those petitions demonstrate, case after case, that the bond hearing process has ceased to function as a genuine liberty check. The consistent pattern of habeas grants across jurisdictions — from the Western District of Michigan to this Court to the Eastern District of Pennsylvania to the Western District of Washington — reflects a structural failure that cannot be remedied by directing individual petitioners back to the very process that is failing them.

37. Requiring exhaustion under these circumstances would serve only to prolong unlawful custody and irreparable harm. *See Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (exhaustion may be excused where pursuit of administrative remedies would be futile). The "irreparable harm" of continued unlawful detention is self-evident: every day of detention is a day of liberty lost that cannot be restored. *See* Rodriguez v. Bostock, 779 F. Supp. 3d at 1245 ("[D]epriving [Petitioner] of his liberty while awaiting a BIA appeal decision certainly equates to hardship. And any delay results in the very harm [Petitioner] is trying to avoid — detention."). The Court should exercise its discretion to reach the merits directly.

## CLAIMS FOR RELIEF

### CLAIM ONE Detention Violates the Immigration and Nationality Act (INA)

38. Petitioner incorporates by reference the allegations set forth in the preceding paragraphs.

39. Respondents are unlawfully detaining Petitioner pursuant to 8 U.S.C. § 1225(b), despite the fact that § 1225(b) is textually and structurally limited to noncitizens seeking admission at a port of entry who have not been admitted. Petitioner was formally admitted into the United States on December 4, 2024, pursuant to a valid B-2 visa, was inspected and authorized by a CBP officer, and was issued [redacted] documenting that admission. He is not, and has never been, an "applicant for admission" within the meaning of 8 U.S.C. § 1225(a)(1).

40. Because Petitioner is not subject to detention under § 1225(b), his continued detention without access to a custody redetermination hearing violates the INA, exceeds DHS's statutory authority, and is unlawful. Petitioner is entitled to habeas relief, including immediate release, or in the alternative, a constitutionally compliant bond hearing under 8 U.S.C. § 1226(a) at which the Government bears the burden of demonstrating by clear and convincing evidence that continued detention is necessary.

### CLAIM TWO Violation of the Due Process Clause of the Fifth Amendment

41. Petitioner incorporates by reference the allegations set forth in the preceding paragraphs.

42. Petitioner's continued detention without a bond hearing or individualized determination of flight risk or danger violates the Due Process Clause of the Fifth Amendment. The Due Process Clause extends to "all persons" within the United States, including noncitizens,

whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Freedom from bodily restraint lies at the core of the liberty the Due Process Clause protects. Id. at 690.

43. Treating Petitioner — a formally admitted nonimmigrant who entered the United States on a valid B-2 visa, filed for asylum in good faith, obtained valid employment authorization, established residence in Oregon, and was arrested in the interior while fully complying with his immigration obligations — as an "arriving alien" subject to indefinite mandatory detention without procedural safeguards is arbitrary, punitive, and contrary to the basic guarantees of due process.

44. Applying the balancing framework of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), all three factors favor Petitioner. First, his liberty interest is profound: civil detention without a criminal conviction or final order of removal constitutes a severe deprivation of the freedom that lies at the core of the Due Process Clause. Second, the risk of erroneous deprivation is high: without an individualized hearing, there is no mechanism to assess the specific facts of Petitioner's case, and the Government's categorical classification bars any such assessment. Third, the Government's interests — ensuring appearance at proceedings and community safety — are fully served by a bond hearing with conditions of release, which imposes minimal administrative burden.

45. Multiple circuit courts of appeals have held that due process requires the Government to bear the burden of justifying a noncitizen's detention by clear and convincing evidence at any bond hearing. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 31 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020); *German Santos v. Warden*, 965 F.3d 203, 213 (3d Cir. 2020). Should this Court order a bond hearing rather than immediate

release, the constitutional minimum requires that the burden of proof rest with Respondents, not Petitioner.

## CLAIM THREE

### Violation of the Suspension Clause of the U.S. Constitution

46. Petitioner incorporates by reference all preceding paragraphs. The Suspension Clause, U.S. Const. art. I, § 9, cl. 2, guarantees that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." By asserting mandatory detention authority under 8 U.S.C. § 1225(b) and denying Petitioner any opportunity to seek release or a bond hearing, the Government has effectively extinguished the core function of the writ — to test the legality of restraint on personal liberty.

47. The Supreme Court has long held that habeas relief remains available to noncitizens seeking to challenge unlawful executive detention. See *INS v. St. Cyr,* 533 U.S. 289, 301 (2001); Boumediene v. Bush, 553 U.S. 723, 779 (2008). Because Petitioner's detention without access to meaningful judicial review constitutes an effective suspension of the writ of habeas corpus, this Court must exercise jurisdiction and grant relief.

## REQUEST FOR IMMEDIATE RELEASE

48. Petitioner does not seek a bond hearing as his primary remedy. He seeks immediate release. This is not a tactical choice — it is a recognition of the constitutional and practical reality that a bond hearing, conducted within the current administrative framework and without specific judicial supervision of its conduct, would provide no meaningful protection for Petitioner's rights.

49. The constitutional defect runs deeper than the absence of an individualized hearing. At its core, the administrative bond process currently operates under a burden-of-proof framework — *In re Guerra*, 24 I&N Dec. 37 (BIA 2006) — that the majority of federal courts have held unconstitutional. Under BIA precedent, the detainee bears the burden of proving that he is not a flight risk and not a danger to the community. The Government need prove nothing. A bond hearing conducted under that standard is not due process — it is an administrative proceeding that begins from a constitutionally infirm premise and systematically disadvantages the very individual whose liberty is at stake. The overwhelming weight of federal authority — 1st, 2d, and 9th Circuits; district courts nationwide; and this Court's own sister courts in the Western District of Michigan — has rejected this standard and held that the Government must bear the burden of justifying detention by clear and convincing evidence. *See Hernandez-Lara*, 10 F.4th at 31; *Velasco Lopez*, 978 F.3d at 850; *German Santos*, 965 F.3d at 213; *Martinez v. Clark*, 124 F.4th at 785–86; *Soto-Medina v. Lynch*, No. 1:25-cv-1704 (W.D. Mich. Jan. 21, 2026). Yet this constitutional mandate does not self-execute in immigration court; it must be imposed by a federal court order in each individual case. Without such an order, Petitioner would face a bond hearing in which the burden of proof falls on him — a structural due process violation from the first moment of the proceeding.

50. But even setting aside the burden-of-proof defect, the Artieda Declaration establishes that the bond hearing process has broken down in a more fundamental way. Mr. Artieda documents that immigration judges have, since early 2026, been denying bond in post-habeas cases even in cases where the Government presents no evidence whatsoever to justify continued detention. *See* Artieda Decl. ¶¶ 8–11, 17. The pretextual rationales he

identifies — "speculative" relief applications, absence of financial sponsors, overstay and civil immigration violations endemic to the detained population — are not individualized findings. They are boilerplate conclusions that could be copy-pasted into the bond denial of virtually every detained noncitizen in removal proceedings. They do not reflect a weighing of Petitioner's specific facts. They reflect a determination, made in advance of the hearing, that detention will continue.

51. The record before this Court already demonstrates that Petitioner presents none of the characteristics that would justify continued detention under any legitimate standard. He entered the United States on a valid B-2 visa. He was formally admitted by a CBP officer. He did not simply file an asylum application — he filed it affirmatively with the USCIS Chicago Asylum Office on March 6, 2025 [redacted] a process that requires voluntary, proactive engagement with federal immigration authorities and reflects a deliberate decision to pursue legal protection through official channels. The Government itself acknowledged his compliant status by issuing him Employment Authorization valid through September 1, 2030. He obtained an [redacted] Driver's License, establishing verifiable, documented residence. He has no criminal history of any kind. He was not attempting to evade immigration authorities. He was residing and working lawfully in [redacted], Oregon, when he was arrested. Against this record, the Government cannot — under any honest application of the clear-and-convincing-evidence standard — carry its burden of demonstrating that Petitioner is a danger to the community or a flight risk. The record affirmatively negates any such finding.

52. Under these circumstances, ordering a bond hearing does not cure the constitutional violation — it defers it. Courts have recognized that where the existing detention

framework cannot reliably protect a detainee's liberty interest, the appropriate habeas remedy is immediate release, not referral to a process whose recent history demonstrates it cannot be trusted to produce constitutionally adequate outcomes. *See Yskakuulu v. Jamison*, No. 2:26-cv-909 (E.D. Pa. 2026) (ordering immediate release without conditioning relief on bond hearing); *Leiva Pinto v. Jamison*, No. 2:26-cv-646 (E.D. Pa. 2026) (same); *Rodriguez Flores v. Mason*, No. 2:26-cv-00044 (S.D. W. Va. Jan. 28, 2026) ("Petitioner is ORDERED released immediately from civil immigration custody"). The purpose of habeas corpus is not to generate additional administrative proceedings — it is to secure release from unlawful custody. That is the relief Petitioner requests.

53. In the alternative, should this Court determine that a bond hearing is the appropriate initial remedy, Petitioner requests that this Court's order expressly and unambiguously impose the following requirements: (a) the hearing must be conducted within five business days; (b) the Government bears the burden of demonstrating by clear and convincing evidence that Petitioner is a danger to the community or a flight risk; (c) the immigration judge must conduct a genuine individualized assessment of the specific facts of Petitioner's case and may not rely on categorical or boilerplate findings applicable to the detained population generally; and (d) if the Government fails to carry its burden, Petitioner must be immediately released. This Court's supervisory authority over the constitutional adequacy of any bond hearing it orders is well established. *See Soto-Medina v. Lynch*, No. 1:25-cv-1704 (W.D. Mich. Jan. 21, 2026) (ordering bond hearing with specific burden and standard requirements and mandating status report certifying compliance).

## PRAYER FOR RELIEF

WHEREFORE, Petitioner Adilet Torobekov respectfully requests that this Court:

1. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241;

2. Issue an order prohibiting Respondents from transferring Petitioner outside the District of Colorado during the pendency of these proceedings;

3. Issue a Writ of Habeas Corpus directing Respondents to immediately and unconditionally release Petitioner Adilet Torobekov from immigration detention, as continued detention under 8 U.S.C. § 1225(b) is unlawful as to a formally admitted nonimmigrant;

4. In the alternative, should the Court determine that a bond hearing is the appropriate initial remedy, order Respondents to provide Petitioner with a constitutionally adequate individualized bond hearing before a neutral Immigration Judge pursuant to 8 U.S.C. § 1226(a) within five (5) business days of the date of this Court's Order, at which the Government shall bear the burden of demonstrating by clear and convincing evidence that Petitioner is a danger to the community or a flight risk, and at which a genuine individualized assessment — not a perfunctory denial — shall be conducted;

5. Order that if Respondents fail to provide such a hearing within the time specified, or if the Government fails to meet its burden by clear and convincing evidence at such a hearing, Petitioner must be immediately released from custody;

6. Order Respondents to file a status report with this Court within seven (7) business days of the date of any bond hearing certifying compliance, including whether bond was granted or denied, the conditions of bond if granted, or the detailed reasons for denial if bond was denied;

7. Declare that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b) and is entitled to custody review under 8 U.S.C. § 1226(a);

8. Enjoin Respondents from re-detaining Petitioner absent lawful statutory authority and constitutionally sufficient procedures, including an individualized bond hearing at which the Government bears the burden of proof by clear and convincing evidence;

9. Order Respondents to return all personal belongings, including identification documents, confiscated from Petitioner upon detention; and

10. Grant such other and further relief as the Court deems just and proper, including an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

Respectfully submitted on March 18, 2026.

**COUNSEL FOR PETITIONER,**

/s/ *Harun Taskin*
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**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have reviewed the relevant documentation of the events described in this Petition that was reasonably available to me prior to and at the time of filing. Based on those documents and on discussions with individuals whom the Petitioner authorized to speak on his behalf, I hereby verify that the statements made in this Verified Petition are true and correct to the best of my knowledge.

Respectfully submitted on March 18, 2026.

**COUNSEL FOR PETITIONER,**

*/s/ Harun Taskin*
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