N THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

VICTOR DANIEL GONZALEZ-GONZALEZ *Petitioner,* *v.* **JUAN BALTAZAR**, Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.; **GEORGE VALDEZ**, Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement; **MARKWAYNE MULLIN**, Secretary, U.S. Department of Homeland Security; **TODD LYONS** Acting Director of U.S. Immigration and Customs Enforcement (ICE). *Respondents.*	**Case No. 1:26-cv-1761** **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case concerns the unreasonable, prolonged, indefinite—and potentially permanent—civil detention of a young father and trauma survivor, who has been held for over a year at the Immigration and Customs Enforcement (ICE) Denver Contract Detention Facility in Aurora, Colorado.

2. Petitioner Victor Daniel Gonzalez-Gonzalez ("Mr. Gonzalez-Gonzalez") has never been arrested or convicted of a crime. Nonetheless, the Department of Homeland Security ("DHS," "the Department," or "the government") jailed him for being unlawfully present in the United States after he was pulled over for a traffic violation on March 12, 2025.

3. Mr. Gonzalez-Gonzalez is being detained under 8 U.S.C. § 1226. *See* Exh. A, Email from U.S. Immigration and Customs Enforcement. Because Mr. Gonzalez-Gonzalez has not been charged with or convicted of a crime, he is properly detained under § 1226(a). Under § 1226(a)(2), Mr. Gonzalez-Gonzalez is eligible to be released either on conditional parole or with a bond. To date, in the more than thirteen months since ICE detained him, he has neither been offered parole nor provided a bond hearing before an Immigration Judge ("IJ") and remains in detention. He has multiple connections to the United States, no criminal record, and has maintained a spotless record during his time in detention.

4. On October 3, 2025, an IJ entered a final order ("Order of the IJ") of removal against Mr. Gonzalez-Gonzalez, which was simultaneously withheld upon her decision to grant Mr. Gonzalez-Gonzalez deferral of removal under the Convention Against Torture ("CAT

Protection"). Exh. B, Order of the IJ. The judge found it "more likely than not" that Mr. Gonzalez-Gonzalez will face torture by government officials if returned to Venezuela. *Id.*

5. On October 27, 2025, Mr. Gonzalez-Gonzalez timely filed an appeal of the IJ's decision to deny him asylum under 8 U.S.C. § 1158 / INA § 208 and withholding of removal under 8 U.S.C. § 1231(b)(3) / INA § 241(b)(3). Specifically, Mr. Gonzalez-Gonzalez appealed the IJ's application of the "persecutor bar" in 8 U.S.C. § 1158(b)(2)(A)(i) / INA § 208(b)(2)(A)(i). The Department did not appeal the IJ's decision to grant CAT Protection. Consequently, whatever the outcome of Mr. Gonzalez-Gonzalez's appeal, he will maintain CAT Protection and cannot be removed to Venezuela.

6. To date, the DHS Board of Immigration Appeals ("BIA") has taken no action on Mr. Gonzalez-Gonzalez's appeal. Specifically, in the six months since Mr. Gonzalez-Gonzalez filed his appeal, BIA has yet to hold a scheduling conference or set a briefing schedule, much less consider or rule on his appeal. Exh. C, DOJ eROP Court Actions.

7. The gravity of the matter is heightened by Mr. Gonzalez-Gonzalez's placement in an overcrowded and unsafe detention facility. As a trauma survivor [redacted] in his own country, and with a documented history of PTSD, depression and anxiety, Mr. Gonzalez-Gonzalez is at serious risk of both repeated trauma and mental health trauma. At this point, he has spent over a year of his life in this detention center. He has missed his son's first and second birthdays and as he testified before the IJ, he has missed his son's first steps and first words. This absence has left him feeling increasingly depressed and filled with anxiety. Continued detention without release would only serve to heighten the trauma he has already sustained. Furthermore, [redacted] very unlikely other countries would accept him or for him to be safely deported to those countries. His status

would make him a target for abuse in many countries to which he may be deported.

8. Accordingly, Mr. Gonzalez-Gonzalez respectfully asks this Court to declare that his continued detention by Respondents is unlawful and order either his immediate release from custody on parole or for an immediate bond hearing where bond will be set.

9. Pursuant to 28 U.S.C. § 2243, Mr. Gonzalez-Gonzalez respectfully requests an order to show cause be issued within three days. Petitioner has submitted a motion to that effect contemporaneously with this petition.

JURISDICTION AND VENUE

10. Mr. Gonzalez-Gonzalez brings this action under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (the All Writs Act).

11. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

12. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States.

13. Venue is proper in the District of Colorado because at least one of the Respondents resides in this District and Respondents detain Mr. Gonzalez-Gonzalez in this District. As such, Mr. Gonzalez-Gonzalez is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this District. 28 U.S.C. § 1391(b).

PARTIES

Petitioner

14. Mr. Gonzalez-Gonzalez is a 27-year-old man from Venezuela who ICE has detained in the Aurora Detention Facility for over a year. Previously [redacted] to escape additional torture and potential loss of life.

15. Despite being granted CAT Protection by an IJ in October 2025, ICE has refused to parole him or provide a bond hearing during the pendency of his BIA appeal. As noted above, DHS has not appealed the IJ's decision to grant CAT Protection.

Respondents

16. Juan Baltazar is the Warden of the Aurora Facility where ICE detains Mr. Gonzalez-Gonzalez. Accordingly, Juan Baltazar is an employee of the GEO Group—the private, for-profit prison company that operates the facility—and is therefore a legal custodian of Mr. Gonzalez-Gonzalez. He is sued in his official capacity.

17. George Valdez is the interim Field Office Director of the Denver Field Office of ICE Enforcement and Removal Operations ("ERO"), which has administrative jurisdiction over Mr. Gonzalez-Gonzalez detention and removal. He is a legal custodian of Mr. Gonzalez-Gonzalez and is sued in his official capacity

18. Markwayne Mullin is the Secretary of DHS. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA). He has ultimate custodial authority over Mr. Gonzalez-Gonzalez because ICE is a sub-agency of DHS. He is sued in his official capacity.

19. Todd M. Lyons is the Acting Director of ICE. He has the authority to make decisions related

to detaining and removing noncitizens. As such, Mr. Lyons is responsible for Mr. Gonzalez-Gonzalez's unlawful detention. He has custodial authority over Mr. Gonzalez-Gonzalez and is sued in his official capacity.

EXHAUSTION OF REMEDIES

20. Habeas petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. *See* 28 U.S.C. § 2241; *see also Brandon v. 30th Judicial Cir. Ct. Of Ky.*, 410 U.S. 484 (1973). Moreover, there is no exhaustion requirement because no administrative agency exists to adjudicate a petitioner's constitutional challenges. *See Matter of C--*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.").

21. Courts have, however, imposed a prudential exhaustion requirement in which petitioners are generally expected to exhaust administrative remedies before seeking habeas relief. *See McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992). This requirement is not absolute, however.

22. Because this expectation is judicially created rather than statutorily required, courts retain discretion to excuse exhaustion in certain circumstances, including in the immigration context "when it would be futile. . . or when 'the interests of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own authority." *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000) and *Gonzalez-Portillo v. U.S. Attorney Gen., Reno,* No. CIV. A. 00-Z-2080, 2000 WL 33191534, at *4 (D. Colo. Dec. 20, 2000)).

23. Despite Mr. Gonzalez-Gonzalez's continued detention and requests for release, DHS has yet to either grant him parole or a bond hearing.

24. Any future request for parole by Mr. Gonzalez-Gonzalez would be futile. A recent decision by a Court in this District explained that DHS officials "virtually confirmed the outcome of the custody review was preordained in any event. (T. 83:19-24 (Q: "Are you aware of a policy of the Government that no paroles be granted?" / A: "Yes, sir." / Q: "What's the policy?" / A: "As of right now, we were told that we would not be granted paroles."). *Arostegui-Moldonado v. Baltazar*, Case. No. 1:25-cv-02205-WJM-STV, p. 25 (Aug. 8, 2025). Given Mr. Gonzalez-Gonzalez's plight, it is evident that the policy remains in effect and he will not be granted parole without an order of this Court.

25. Any future request for a bond hearing for Mr. Gonzalez-Gonzalez would also be futile. If the Government contends that he is detained under a mandatory detention statute such as § 1226(c) or §1225(b), the Government would also likely argue that he is not eligible for a bond and an IJ would not provide a hearing.

STATEMENT OF THE FACTS

Mr. Gonzalez-Gonzalez's Background and Immigration History

26. [redacted] Instead, he was [redacted]

[redacted]

27. Mr. Gonzalez-Gonzalez eventually fled to the United States in October 2023, following his pregnant girlfriend, Maria, who had already entered the United States. She had gone to Oklahoma to live with family there.

28. A clinical social worker has diagnosed Mr. Gonzalez-Gonzalez as suffering from post-traumatic stress disorder ("PTSD"), anxiety disorders and thought and mood disorders including depression. See Exh. D, Affidavit of License Clinical Social Worker Regarding Diagnostic Evaluation. The stress of reports about the condition of his girlfriend, pregnant with his first child, while waiting at the border for entry exasperated his medical conditions.

29. Mr. Gonzalez-Gonzalez entered the United States in December 2023.

30. After initially travelling to Denver, where he had a friend who could give him a place to stay and help him find work,Mr. Gonzalez-Gonzalez eventually reunited with Maria in January 2024 and remained with her in Oklahoma until their son was born a U.S. citizen on [redacted].

31. Mr. Gonzalez-Gonzalez stayed in Oklahoma for several months trying to earn a living for his young family. He helped take care of Maria and his son in the weeks and months after his birth. Despite his best efforts, he had difficulty making enough money in Oklahoma to pay for all their needs.

32. In late summer 2024 he returned to Denver where he could earn more money. He would frequently drive between the states to visit his son and girlfriend over weekends and on his days off. Returning from Oklahoma to Colorado, he was pulled over for a traffic violation on March 12, 2025. He has been detained by ICE since that date.

33. Mr. Gonzalez-Gonzalez has not seen his son or Maria in person in over a year.

34. Reports about the facility Mr. Gonzalez-Gonzalez is being detained in claim that it is "near capacity," "unsanitary and unsafe," detainees are "malnourished and forced to work," and subject to "widespread illness." Lindsey Toomer, *Aurora ICE facility population near capacity after recent expansion*, Colorado Newsline (Jan. 12, 2026), https://coloradonewsline.com/briefs/aurora-ice-population-capacity/; The Denver Post Editorial Board, *U.S. Rep. Jason Crow had good reason to inspect Aurora's immigration detention facility*, The Denver Post (July 23, 2025), https://www.denverpost.com/2025/07/23/jason-crow-immigration-detention-aurora-facility-geo-group/; Kyle Harris, *Aurora ICE detainees are malnourished and forced to work, advocates report*, Denverite (Mar. 2, 2026), https://denverite.com/2026/03/02/aurora-geo-immigration-jail-ice-conditions-report/; Elizabeth Hernandez, *Adams County admonishes ICE detention center over poor access, communication during public health investigation*, The Denver Post (Mar. 27, 2026), https://www.denverpost.com/2026/03/27/aurora-ice-detention-health-investigation/. As the Court in *Maldonado* found, "the conditions at the Aurora Facility strongly resemble penal confinement. More than that, they are abhorrent." *Maldonado*, at 15.

35. Mr. Gonzalez-Gonzalez has witnessed significant violence among detainees at the Aurora Facility and must regularly guard himself against such violence.

36. Mr. Gonzalez-Gonzalez originally had an individual merits hearing set for August 8, 2025. That hearing was first delayed until August 19, 2025, and then September 11, 2025.

37. After his individual merits hearing held September 11, 2025, IJ Nina Carbone issued a written decision on October 3, 2025, which granted Mr. Gonzalez-Gonzalez's request for CAT Protection, under 8 C.F.R. §§ 1208.16(d)(2) and 1208.17(a), deferring his removal to Venezuela. Judge Carbone found that he would "more likely than not" face torture by

government officials in Venezuela if he returned. Exh. A, Order of the IJ.

38. On October 27, 2025, Mr. Gonzalez-Gonzalez timely filed an appeal of the IJ's decision to deny him asylum under 8 U.S.C. § 1158 / INA § 208 and withholding of removal under 8 U.S.C. § 1231(b)(3) / INA § 241(b)(3). Specifically, Mr. Gonzalez-Gonzalez appealed the IJ's application of [redacted]. The Department did not appeal the IJ's decision to grant CAT Protection.

39. Consequently, whatever the outcome of Mr. Gonzalez-Gonzalez's appeal, he will maintain CAT Protection and cannot be removed to Venezuela.

40. To date, the DHS Board of Immigration Appeals ("BIA") has taken no action on the appeal. Specifically, in the six months since Mr. Gonzalez-Gonzalez filed his appeal, BIA has yet to hold a scheduling conference or set a briefing schedule, much less consider or rule on his appeal. *See* Exh. C, Screenshot of DOJ eROP Court Actions.

41. As of February 13, 2026, the American Immigration Council reported that the BIA has been reduced from 28 members to 15 and has a case load of nearly 203,000 appeals pending. Adriel D. Orozco, *DOJ Moves to End Administrative Immigration Appeals to Speed Up Mass Deportations*, American Immigration Council (Feb. 13, 2026), https://www.americanimmigrationcouncil.org/blog/justice-departments-end-immigration-appeals-deportations/.

42. To date, Mr. Gonzalez-Gonzalez has neither been offered parole nor provided a bond hearing before an Immigration Judge ("IJ") and remains detained.

43. Detained in a crowded prison, apart from his infant son and his son's mother, has led to a decline in Mr. Gonzalez-Gonzalez's mental health status. Due to his PTSD, anxiety, and depression, every day he is detained submits him to additional trauma.

LEGAL FRAMEWORK

Constitutional Limits to Detention

44. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. Indefinite detention raises a particularly "serious constitutional problem" and directly violates the Due Process Clause. *Id.* at 689-90.

45. Any deprivation of the liberty interests protected by the Due Process Clause must be closely related to a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "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").

46. Generally, when the Government continues to detain a person, "the Supreme Court has long held that the clear and convincing evidence standard applies to civil detention where an individual's liberty interest is at stake." *Maldonado*, at 23 (citing *United States v. Salerno*, 481 U.S. 739, 751 (1987)).

Release Under 8 U.S.C. § 1226(a)(2) due to unreasonable detention

47. The Department's longstanding practice is to release noncitizens held under 8 U.S.C. § 1226(a)(2), like Mr. Gonzalez-Gonzalez, pending removal proceedings and appeals when the noncitizen has no criminal history and ties to the country.

48. Under § 1226(a)(2), a detainee may be released on either conditional parole or a bond of at least $1,500.

49. Release under § 1226(a)(2) is not tied to completion of removal proceedings and may be granted at any time during removal proceedings, including prior to a final order or during an appeal. To the contrary, in *Moldanado* the Court expressly noted that "courts have refused to 'hold [petitioners'] efforts to seek relief through the available legal channels against [them].'" *Moldanado*, at 17 (citing *de Zarate*, 2023 WL 2574370, at 4, and *Gernman Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 212 (3d Cir. 2020))

50. Release by DHS is at the discretion of the Attorney General who has subsequently delegated that discretion to Immigration Judges. *Jennings v. Rodriguez*, 584 U.S. ___, 22 (2018); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) citing 8 C.F.R. §§ 1003.19, 1236.1.

51. To be released, a detainee "must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I&N at 38 (citing *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999)).

52. Factors to be weighed when determining release under § 1226(a)(2) as set forth in *Matter of Guerra*, 24 I&N at 40 (citing *Matter of Saelee*, 22 I&N Dec. 1258 (BIA 2000); *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994); *Matter of Andrade*, 19 I&N Dec. 488 (BIA 1987)), include:

    1. Whether the alien has a fixed address in the United States;
    2. The alien's length of residence in the United States;
    3. The alien's family ties to the United States, and whether they may entitle the alien to reside permanently in the United States in the future;
    4. The alien's employment history;
    5. The alien's record of appearance in court;

6. The alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses;
7. The alien's history of immigration violations;
8. Any attempts by the alien to flee prosecution or otherwise escape from authorities; and
9. The alien's manner of entry to the United States.

53. Furthermore, in *Jennings*, the Supreme Court noted that at a minimum, "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 584 at 22 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).

54. In its review of 8 U.S.C. § 1225(b)(1) – a mandatory detention statute – the *Jennings* Court analyzed what differentiated that statute from § 1231(a)(6) in *Zadvydas*. As the Court explained, "the key statutory provision in *Zadvydas* said that the aliens in question 'may,' not 'shall,' be detained, and that provision also failed to specify how long detention was to last." *Jennings v. Rodriguez*, 583 U.S. at 27; *Id.* at 15 ("'May,' the [*Zadvydas*] Court said, 'suggests discretion' but not necessarily 'unlimited discretion.' In that respect the word 'may' is ambiguous"). Like § 1231(a)(6) in *Zadvydas*, § 1226(a) employs the term "may" in the scope of discretion to release a detainee. Section 1226(a) also does not specify how long detention is intended to last.

55. In *Zadvydas*, the Supreme Court limited post-final-order detention to "a period reasonably necessary to secure removal." 533 U.S. 678, 699 (2001). Where removal is not reasonably foreseeable, continued detention is deemed unreasonable and "no longer authorized by statute." *Id.* The Court held that a noncitizen may not be held in post-final-order detention beyond six months unless there is a significant likelihood of removability in the reasonably

foreseeable future. *Id.* at 699.

Release under mandatory detention statutes due to prolonged detention

56. While Mr. Gonzalez-Gonzalez's lack of criminal history dictates that he is being detained under § 1226(a), due process under the Fifth Amendment would nevertheless require his release or a bond hearing if he were instead held under a mandatory detention statute such as § 1226(c) or § 1225(b).

57. Over the past year, the Government has attempted to rewrite decades of precedent and policy treating people who entered without inspection under § 1226. First, through an unpublished BIA decision on May 22, 2025, holding noncitizens who entered the United States without inspection subject to § 1225(b) mandatory detention as "applicants for admission." Just over a month later, on July 8, 2025, ICE and the DOJ announced a new coordinated policy statement consistent with the BIA ruling that all noncitizens present in the United States who entered without inspection would now be deemed "applicants for admission" under § 1225(b). Despite federal courts rejecting that interpretation almost immediately (*See Rodriguqz-Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 804 F.Supp.3d 265 (D. Mass. 2025)), the BIA finally published a precedential decision adopting the Government's rewritten position. In *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), the BIA declared any noncitizen who entered the country without inspection, no matter where or how long ago, was subject to § 1225(b). Now IJs across the country have been forced to adopt this policy and deny detainees the opportunity for a hearing for release.

58. This revisionist history has been soundly rejected by federal courts across the country. *E.g., Sampiao v. Hyde,* 799 F.Supp.3d 14 (D. Mass. 2025); *Pizzaro Reyes v. Raycraft,* No. 25-cv-

12546, 2025 WL2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser, No.* 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin. Warden et al.,* 799 F.Supp.3d 59 (D.N.H. 2025); *Lopez Santos v. Noem,* 3:25-CV-0l 193, 2025 WL2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser et al., No* 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025); *Barrera v. Tindall*, No. 3:25-cv-00541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chafla v. Scott,* 804 F.Supp.3d 247, 258 (D.Me, 2025); *Moldonado Vasquez v. Feeley,* 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lopez-Arevelo v. Ripa,* 2025 WL 2631828 (W.D. Tex. Sept. 22, 2025); *Lepe v. Andrews,* 801 F.Supp.3d D. Cal. 2025); *Roa v. Albarran,* No. 25-cv-7802, 2025 WL 2732923, at' 1 (N.D. Cal. Sept. 25, 2025); *Luna Quispe v. Crawford,* 1 :25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v. ICE*, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *B.D. V.S. v. Forestal*, 25-cv-0 1968, 2025 WL 2855743 (S.D. Ind, Oct. 8, 2025); 2025); *Da Silva v, Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025).

59. The District of Colorado is not an exception. Time and again, judges in the District of Colorado have rejected the Government's attempt to overturn decades of precedent. *Garcia Cortez v. Noem et al.,* No. l:25-cv-02677-CNS, 2025 WL 2652880 at *3 (D. of Colo. Sept. 16, 2025); *Mendoza Gutierrez v. Baltazar et al.,* 1:25-cv-2720, 2962908 (D. Colo, Oct. 17, 2025); *Pineda v. Baltasar et al.,* l:25-cv-2966, 2025 WL 3516291 (D. Colo. Oct. 20, 2025); *Loa Caballero v. Baltazar et al.,* 25-cv-03120, 2025 WL 2977650 (D. Colo, Oct. 22, 2025); *Hernandez Vazquez v. Baltasar et al.,* 1:25-cv-3049-GPG, 2025 WL 4083603 (D. Colo, Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.,* 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Artola Aruaz v. Baltazar, et al.,* 1:25-cv-03260-CNS, 2025 WL 3041840 (D.

Colo, Oct. 31, 2025), ECF 16; *Cervantes Arredondo v. Baltazar, et al.,* l:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025), ECF 21; *De Domingo Campos v. Baltazar,* 25-cv-3062, 2025 WL 4083609 (D. Colo. Nov. 13, 2025), ECF 33; *Ortiz Rosales v. Baltazar, et al.,* 25-cv-03275-GPG (D. Colo, Nov, 16, 2025), ECF 25; *Espinoza Ruiz v. Baltazar, et al,,* 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025), ECF 18; *Velasquez de Leon v, Baltazar et al.,* 1:25-cv-03805-RBJ, *5 n.4 (D. Colo. Dec, 22, 2025), ECF 19 (collecting cases); *Navas Medina v. Batazar el al,,* l:25-cv-03919-RMR (D. Colo. Dec, 29, 2025), ECF 17; *Rodriguez Rodriguez v, Baltasar et al.,* l:25-cv-03961-GPG (D. Colo. Dec. 30, 2025), ECF 20; *Ugarte Hernandez v. Baltazar, et al.,* 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (collecting cases and acknowledging the District's unanimity); *Portillo-Martinez v. Baltazar,* No. 26-cv-00106-PAB, 2026 WL 194163 (D. Colo. Jan. 26, 2026); *Chavez Amrenta v. Noem,* No. 26-cv-00236-PAB, 2026 WL 274634, (D. Colo. Feb. 3, 2026); *Hernandez v. Baltazar,* 26-cv-0276-WMJ-TPO, 2026 WL 304362 (D. Colo. Feb. 5, 2026).

60. It is against that background of shifting Government sands, despite the overwhelming rejection by federal courts, that Mr. Gonzalez-Gonzalez feels compelled to make this alternative legal argument despite ICE informing undersigned counsel, in writing, that he is detained under § 1226. Exh. A, Email from U.S. Immigration and Customs Enforcement.

61. *Maldonado* examined constitutional due process claims for an individualized bond hearing after prolonged detention. The Court found that "as-applied constitutional challenges to prolonged detention are separate and distinct from the statutory prohibition against indefinite detention" and that in the District of Colorado "the vast majority of judges have applied the *Singh* factors when assessing a noncitizen petitioner's *constitutional* challenge to prolonged detention." *Maldonado*, at 12-13 (emphasis in original) (citing *Martinez v. Ceja*, 760 F. Supp.

3d 1188, 1193 (D. Colo. 2024); *de Zarate v. Choate*, 2023 WL 2574370, at *3 (D. Colo. Jan. 6, 2023); *Viruel Arias v. Choate*, 2022 WL 4467245, at *2 (D. Colo. Sept. 26, 2022); *Singh v. Choate*, 2022 WL 17075894, at *3 (D. Colo. July 27, 2022); *Singh v. Garland*, 2021 WL 2290712, at *4 (D. Colo. June 4, 2021); *Villaescua-Rios v. Choate*, 2021 WL 269766, at *2 (D. Colo. Jan. 27, 2021).

62. *Singh v. Choate*, 2019 WL 3943960 (D. Colo. Aug. 21, 2019 (Mix, M.J.) created a six-factor test to assess due process challenges under prolonged detention: (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. *Maldonado*, at 14 (citing *Singh*, at *5).

ARGUMENT

Mr. Gonzalez-Gonzalez meets the criteria for release under § 1226(a)

63. As the Supreme Court made clear in *Jennings*, DHS should have provided Mr. Gonzalez-Gonzalez with an opportunity to seek release when his detention began. He is being held under § 1226(a) and meets the criteria for release. He "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 at 38 (citing *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999)).

64. To date, Mr. Gonzalez-Gonzalez has not been offered release via conditional parole or a bond hearing.

65. The factors set forth in *Matter of Guerra* weigh heavily in Mr. Gonzalez-Gonzalez's favor:

    1. Prior to detention, he had a fixed address in the United States with a friend in Denver and with his family in Oklahoma;

2. Mr. Gonzalez-Gonzalez had living and working in the United States for over a year before his current detention;
3. Mr. Gonzalez-Gonzalez has a son, who is a U.S. citizen, living in the United States with his girlfriend, his son's mother;
4. Mr. Gonzalez-Gonzalez maintained employment during his time in the United States prior to detention; he worked in Denver specifically because he earned more money to support his family in Denver than in Oklahoma;
5. Mr. Gonzalez-Gonzalez has never missed a court appearance;
6. Mr. Gonzalez-Gonzalez does not have a criminal record in the United States or Venezuela (beyond [redacted] he was detained after being pulled over for a civil traffic infraction;
7. Mr. Gonzalez-Gonzalez does not have a history of immigration violations beyond the current immigration proceedings he is appealing;
8. Mr Gonzalez-Gonzalez has never attempted to flee or evade authorities in the United States; and
9. As explained during his individual merits hearing and supporting by a clinical social worker, Mr. Gonzalez-Gonzalez's entry into the United States was necessitated by a medical emergency.

66. In sum, the *Matter of Guerra* factors overwhelming favor release of Mr. Gonzalez-Gonzalez. They demonstrate that he is a danger to neither people, property, nor national security and would not be flight risk.

67. Consequently, if Mr. Gonzalez-Gonzalez had received a hearing to consider his release, it is highly likely he would have met his burden and been released, either via conditional parole or

a bond.

Mr. Gonzalez-Gonzalez has been detained for an unreasonable period of time

68. Due to similarities in key statutory language, release under § 1226(a) should be treated as analogous to release under § 1231(a)(6) in *Zadvydas*. As *Jennings* explained, when a statute both employs the discretionary term "may" in conjunction with a failure to specify how long detention should last, it is subject to an inference that the period of detention must be reasonable. *Jennings v. Rodriguez*, 583 U.S. at 15, 27.

69. Section 1226(a) falls into the same statutory category as § 1231(a)(6) in *Zadvydas*. It uses the discretionary term "may" in regard to both detention and release and it fails to specify how long detention should last. Consequently, it follows that like § 1231(a)(6), § 1226(a) is subject to a "reasonable" standard.

70. *Zadvydas* set a reasonable standard at six months. While the *Jennings* Court cast some doubt about whether periodic bond hearings were required every six months (*Jennings v. Rodriguez*, 583 U.S. at 23), the Court made it clear that a bond hearing should be made at the outset of detention. *Jennings*, 584 at 22. The only remaining question remaining is what constitutes a reasonable period of time before additional hearings for release must be provided.

71. In Mr. Gonzalez-Gonzalez's case, the period since the outset of detention has now lasted over 13 months. He neither received a hearing at the outset of detention nor at any time since. Consequently, his continued detention without a § 1226(a)(2) hearing is patently not reasonable.

72. Mr. Gonzalez-Gonzalez's plight is further exacerbated by the fact that he cannot be removed to his home country of Venezuela. The Order of the IJ granted Mr. Gonzalez-Gonzalez CAT

Protection. But for his pending BIA appeal for full asylum, which has completely stalled for six months, he would likely be in a position to request release under *Zadvydas* directly. Continued detention consequently also has the appearance of punishment for exercising his appellate rights.

73. The failure to provide Mr. Gonzalez-Gonzalez with a hearing for release has consequently run contrary to Supreme Court precedent and violates his rights to due process.

Mr. Gonzalez-Gonzalez would be entitled to a bond hearing even under mandatory detention statutes due to his prolonged period of detention

74. Even if the Government were to claim that Mr. Gonzalez-Gonzalez is being held under a mandatory detention statute, due process would entitle him to a bond hearing due to his prolonged detention.

75. Application of the *Singh* factors weighs heavily in Mr. Gonzalez-Gonzalez's favor:

1. Length of Detention. Mr. Gonzalez-Gonzalez has been detained for over thirteen months. That period is significantly longer than the period considered "prolonged" under *Moldonado* and "'surpassed the rough six-month threshold at which detentions become less and less reasonable.'" *Moldonado*, at 14 (quoting *Perez v. Decker*, 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018).
2. Likely Duration of Future Detention. Mr. Gonzalez-Gonzalez's detention is likely to continue for months, more likely years, if he is not granted relief by this Court. His appeal with BIA has not proceeded and there is no indication that it is likely to be resolved soon. Even once the BIA addresses his appeal, if ever, more appeals could additionally prolong proceedings.
3. Conditions of Detention. As Mr. Gonzalez-Gonzalez has alleged and a judge in

this District has agreed, the conditions at the facility where he is being detained are abhorrent. It is overcrowded and unsanitary and Mr. Gonzalez-Gonzalez is not provided proper nourishment and regularly must avoid violence from other detainees. These factors are all exacerbated by his mental health deterioration as his detention persists.

4. Delays by Petitioner. Mr. Gonzalez-Gonzalez has not delayed proceedings, particularly since his exercise of appellate rights cannot be held against him. To the contrary, Mr. Gonzalez-Gonzalez has already obtained relief in the form of CAT Protection, which has not been appealed by DHS. But for his appeal, he may already have been released under *Zadvydas*.
5. Delays by the Government. Mr. Gonzalez-Gonzalez had to wait an additional month due to delay by the Government in his merits case. After filing his timely appeal with the BIA, he has waited more than six months for any action to be taken in his appeal. This is an untenable delay by the Government.
6. Likelihood of Removal. Under the Order of the IJ, Mr. Gonzalez-Gonzalez cannot be removed to his home country of Venezuela. Furthermore, due to the humanitarian crisis in Venezuela over the past few years, and the attendant number of refugees, finding an appropriate and safe third-country removal has become exceedingly difficult. Given this combination of facts, it is very unlikely that Mr. Gonzalez-Gonzalez would be removed after his case becomes final, but before he would be eligible for release under *Zadvydas*.

76. Because all six factors weight in favor of Mr. Gonzalez-Gonzalez, even if he is being held under a mandatory detention statute he would be eligible for a bond hearing due to his

prolonged detention.

Mr. Gonzalez-Gonzalez's BIA Appeal Does Not Bar His Release

77. The U.S. District Court for the District of Colorado has seen a surge in cases requesting immediate release or bond hearings while appeals were pending. Some recent cases have denied those requests, including *Bonilla Espinoza v. Ceja*, No. 1:25-cv-01120-GPG, slip op. (D. Colo. May 21, 2025) and *Richards v. Choate*, No. 1:25-cv-03134-DDD-STV, slip op. (D. Colo. December 05, 2025). Mr. Gonzalez-Gonzalez's case should be differentiated.

78. As a threshold matter, Mr. Gonzalez-Gonzalez is held in detention under the discretionary statute § 1226(a) and, as discussed above, is eligible for release. This is different than the parties in either *Bonilla Espinoza* or *Richards* who were both held under the mandatory detention statute 8 U.S.C. § 1225(b).

79. As also discussed above, even if Mr. Gonzalez-Gonzalez were held under a mandatory detention statute, due process demands he receive a bond hearing after prolonged detention.

80. Additionally, both *Bonilla Espinoza* and *Richards* noted that government inaction or delay would favor release due to unreasonable and prolonged detention.

81. In *Bonilla Espinoza* the Court explained that the petitioner's case was "significantly different from those cases in which government misconduct or inaction causes detainee to wait significant time before receiving any administrative process, or significant delays within the administrative process." *Bonilla Espinoza v. Ceja*, No. 1:25-cv-01120-GPG, slip op. at 13. The Court also highlighted Justice Kennedy's concurrence in *Demore v. Kim*, 538 U.S. 510 (2003): "[w]ere there to be an unreasonable delay by [immigration officials] in pursuing an completing deportation proceedings, it could become necessary then to inquire whether the

detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Bonilla Espinoza*, slip op. at 22 (citing *Denmore.* at 532-33). Consequently, Court agreed that "it is arbitrary government delay in moving proceedings along that potentially triggers a due process problem." *Bonilla Espinoza*, slip op. at 24.

82. In *Richards*, the Court further explained that "evidence of government wrongdoing in connection with the removal proceedings, such as actions that unreasonably prolong the removal proceeding" could trigger due process concerns. *Richards* slip op. at 16.

83. In his BIA appeal, Mr. Gonzalez-Gonzalez has been subject to prolonged delay conditions condemned in *Denmore*, *Bonilla Espinoza*, and *Richards*.

84. Mr. Gonzalez-Gonzalez filed his BIA appeal on October 27, 2025. No action of any kind has taken place in that appeal in the interim six months.

85. In contrast, the petitioner in *Bonilla Espinoza* filed petitioner's first BIA appeal on April 29, 2024, had a briefing schedule set just over two weeks later on May 14, 2024, and filing deadline of June 4, 2024. *Bonilla Espinoza*, slip op. at 5-6. Similarly, in *Richards* the petitioner filed a Notice of Appeal to BIA on June 12, 2025, and on August 11, 2025 the BIA issued a briefing schedule with September 2, 2025, set at the briefing deadline. Both cases moved along within a period of weeks.

86. The reduction in BIA members in conjunction with a crush of appeals has likely contributed to the lack of action taken in Mr. Gonzalez-Gonzalez's appeal. That has in turn led to a violation of his due process rights due to unreasonable and prolonged detention.

Mr. Gonzalzez-Gonzalez should be granted immediate release or, alternatively, in a custody hearing the Government must carry the burden to prove he is a flight risk by clear and convincing evidence

87. Mr. Gonzalez-Gonzalez maintains that the proper form of relief is immediate release from detention. That is particularly true in current circumstances where due process before an IJ may be deficient.

88. Across the country and in Colorado courts have increasingly questioned how IJs conduct custody hearings. Specifically, they have questioned whether their orders will be followed to hold a custody hearing, conduct a custody hearing correctly apply the correct burden of proof, or address continued unlawful custody after release (such as an ankle monitor). *See Sierra-Cerritos v. Simon,* No. 1 :25-cv-2380 (RDA/LRV) (E.D. Va. March 18, 2026), ECF No. 17, Order ("A bond hearing fails to comport with due process where 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" as required by 8 U.S.C. § 1226(a)); *Picado v. Hyde,* 2026 WL 352691, at *7 (D.R.I. Feb. 9, 2026) (noting that Petitioner had "participated in two bond hearings that two separate judges have found to be deficient. It makes little sense to provide him with a third" and ordering immediate release); *Gomez Rodriguez v. Noem,* 2025 WL 3771268, *2 (M.D. Fla. 31, 2025) (noting that "[i]n other cases before this Court, the Respondents have claimed they cannot direct EOIR when to conduct a bond hearing" and ordering release if the government does not comply); *Khogiani v. Raycraft,* 2025 WL 3753532, *4 (E.D. Mich. Dec. 29, 2025) (noting the government's argument that given the "overwhelming caseload" in the immigration courts, it likely could not comply with an order to hold a bond hearing within five days).

89. In the District of Colorado judges have raised similar questions. In *Cervantes Arredondo v.Baltazar,* No. 1 :25-cv-03040-RBJ (D. Colo. Dec. 18, 2025), ECF 26, Judge Jackson granted the motion to enforce due to failure of the IJ to properly apply the burden of proof to DRS as required by the Court's habeas order. And in early April, Judge Martinez shared concerns that

that IJs "often cite little or no reasoning in determining that noncitizens are a flight risk." *Singh v. Valdez,* 2026 WL 890240, *5 (D. Colo. Apr. 1, 2026) (noting that "the Court learned that an IJ declined to release a petitioner on bond for whom it had ordered a bond hearing in a summary decision that merely stated, without any citation to specific facts"), *Id.* at n.4 (citing cases).

90. If this Court does not order Mr. Gonzalez-Gonzalez's immediate release, at any hearing before an IJ it must order the Government to prove by clear and convincing evidence that he is a flight risk if the IJ denies Mr. Gonzalez-Gonzalez release on parole or bond. *See L.G. v. Choate*, 744 F.Supp.3d 1172, 1187 (D.Colo.2025); *Martinez Escobar v. Baltazar*, 2026 WL 503313, at *5 (D. Colo. Feb. 24, 2026). This is the same burden the Government must carry in any case involving an infringement of liberty through civil detention. *Id.*

91. Additionally, if the Court order Respondents to provide a bond hearing, it should also preclude Respondents from invoking the automatic stay of any bond order by the IJ under 8 C.F.R. § 1003.19(i)(2). The alternative would violate Mr. Gonzalez-Gonzalez's Fifth Amendment due process rights. *Merchan-Pacheo*, 2026 WL 88526, at *9.

CLAIMS FOR RELIEF

COUNT I

Failure to Provide a Hearing for Release under § 1226(a)(2) and Unreasonable Period of Detention

92. Mr. Gonzalez-Gonzalez realleges and incorporates by reference the paragraphs above.

93. The government detains Mr. Gonzalez-Gonzalez pursuant to 8 U.S.C. § 1226, which governs the discretionary detention of noncitizens pending removal proceedings. He has been held in detention for more than 13 months.

94. Mr. Gonzalez-Gonzalez should have been provided a release hearing at the outset of his detention.

95. Failure to provide Mr. Gonzalez-Gonzalez a hearing for release under § 1226(a)(2) is unreasonable, both at the outset of his detention and now, thirteen months later.

96. Accordingly, Mr. Gonzalez-Gonzalez respectfully requests that this Court order Respondents to immediately release him from detention on conditional parole§ 1226(a)(2)(B), free of any custodial invasions of his privacy such as an ankle monitor.

97. Alternatively, Mr. Gonzalez-Gonzalez respectfully requests that this Court order Respondents to set a bond at $1,500, the minimum amount for bond under § 1226(a)(2)(A).

98. Alternatively, Mr. Gonzalez-Gonzalez respectfully requests that this Court order Respondents to set an immediate bond hearing to take place within the next five days and at which he will be granted a bond unless the Government proves by a clear and convincing standard that he is a flight risk.

COUNT II

Violation of the Procedural Due Process Clause of the Fifth Amendment of the United States Constitution

99. Mr. Gonzalez-Gonzalez realleges and incorporates by reference the paragraphs above.

100. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention pursuant to § 1226(a) is detention and release pending a final decision on removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).

101. The government's continued detention of Mr. Gonzalez-Gonzalez without providing a

hearing for release and while his BIA appeal demonstrates government inaction violates his procedural due process rights and renders his detention indefinite.

COUNT III

Violation of the Substantive Due Process Clause of the Fifth Amendment of the United States Constitution

102. Mr. Gonzalez-Gonzalez realleges and incorporates by reference the paragraphs above.

103. The Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property[] without due process of law." U.S. Const. amend. V. Moreover, "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*, 533 U.S. at 693.

104. Moreover, the Supreme Court has established that noncitizens held under § 1226(a) must receive a hearing for release at the outset of detention. *Jennings*, 584 at 22.

105. More than 13 months have elapsed since Mr. Gonzalez-Gonzalez has been detained; six months has passed since he requested an appeal before the BIA. He is not a threat to persons, property, or national security, he has no criminal record, connections to the country, and is not a risk for flight. Under these circumstances, Mr. Gonzalez-Gonzalez's continued detention is completely untethered to any legal basis. At this stage, DHS's refusal to release Mr. Gonzalez-Gonzalez is "the exercise of power without any reasonable justification" and a violation of due process principles. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

106. The indefinite nature of Mr. Gonzalez-Gonzalez's detention under § 1226(a) – or even a mandatory detention statute - violates his substantive due process rights under the Fifth Amendment by depriving his of his "strong liberty interest." *United States v. Salerno*, 481 U.S. 739, 750 (1987).

107. At thirteen months in detention, six awaiting action by the BIA, continued detention of Mr. Gonzalez-Gonzalez serves no government purpose other than to punish and incarcerate him. *Bonilla Espinoza*, slip op. at 22 (citing *Denmore.* at 532-33).

108. Accordingly, Mr. Gonzalez-Gonzalez respectfully requests this Court order Respondents to immediately release him.

PRAYER FOR RELIEF

WHEREFORE Mr. Gonzalez-Gonzalez respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order prohibiting Respondents from transferring Mr. Gonzalez-Gonzalez outside of the jurisdiction of the District of Colorado pending the resolution of this case;

c. Issue an order to show cause or order to answer pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause within three days of why the writ should not be granted;

d. Issue an order declaring that Respondents' continued detention of Mr. Gonzalez-Gonzalez without providing him a hearing for release under 8 U.S.C. § 1226(a)(2) is unlawful, and a violation of his procedural and substantive due process rights under the Due Process Clause of the Fifth Amendment of the U.S. Constitution;

e. Issue an order instructing Respondents to immediately release Mr. Gonzalez-Gonzalez on conditional parole under 8 U.S.C. § 1226(a)(2)(B);

f. Alternatively, issue an order instructing Respondents to set a bond in the amount of $1,500 under 8 U.S.C. § 1226(a)(2)(A);

g. Alternatively, issue an order declaring that Mr. Gonzalez-Gonzalez has been detained for a prolonged period in violation of his procedural and substantive due process rights under the Due Process Clause of the Fifth Amendment of the U.S. Constitution, and that he is

therefore entitled a bond hearing within five days at which time a bond will be set unless the Government proves by a clear and convincing standard that Mr. Gonzalez-Gonzalez is a flight risk;

h. Order that in any custody or bond hearing before an IJ, the Government be required to carry the burden to prove Mr. Gonzalez-Gonzalez is a flight risk;

i. Prohibit Respondents from applying the automatic stay of an IJ bond;

j. Award Mr. Gonzalez-Gonzalez his costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

k. Grant any further relief as this Court deems just and proper.

Dated: April 24, 2026

s/ Mario Nicolais

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Pro Bono Counsel for Petitioner

VERIFICATION

I, s/ Mario Nicolais, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in Mr. Gonzalez-Gonzalez's Petition for Writ of Habeas Corpus are true and correct.

Dated: April 24, 2026

EXHIBITS

A. Email dated April 14, 2026, from U.S. Immigration and Customs Enforcement to counsel for Mr. Gonzalez-Gonzalez confirming his detention under 8 U.S.C. § 1226.

B. Order of Immigration Judge Nina Carbone, dated October 3, 2025, granting Mr. Gonzalez-Gonzalez withholding removal under the United Nations Convention Against Torture.

C. Screenshot of DOJ eROP Court Actions in Mr. Gonzalez-Gonzalez's case taken on April 24, 2026.

D. Affidavit of Licensed Clinical Social Worker Miriam Denmark regarding diagnostic evaluation dated September 10, 2025.