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UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLORADO

ISAIAS RAFAEL MORENO-GUERRERO Petitioner v. KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, GEORGE VALDEZ, in his official capacity as Field Office Director, JUAN BALTAZAR, in his official capacity as the warden of the Aurora Contract Detention Facility, PAMELA BONDI, in her official capacity as the United States Attorney General, The Executive Office for Immigration Review, United States Immigration and Customs Enforcement, The Board of Immigration Appeals, Respondents	Case No. 1:26-cv-00855-NYW **PETITIONER'S REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS** IMMIGRATION HABEAS CASE

On March 18, 2026, Respondents filed their response to the Court's Order to Show Cause. Petitioner, by and through undersigned counsel, respectfully submits this reply. Courts within the Tenth Circuit and across the country have rejected Respondents' interpretation of mandatory detention[1].

I. Respondents' Interpretation of § 1225(b)(2)(A) Is Incorrect and Inconsistent with the Statutory Scheme

Respondents argue that Petitioner is "subject to § 1225(b)(2)(A)" because, in their view, he is an "applicant for admission" and therefore must be detained without bond. But as courts recognized in *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo.), this analysis misunderstands both the text of § 1225 and the statutory detention framework Congress adopted in the Immigration and Nationality Act.

Respondents' interpretation rests on the premise that the statutory definition of "applicant for admission" in § 1225(a)(1) automatically triggers mandatory detention under § 1225(b)(2)(A) in all circumstances. That premise is incorrect. When read in context, § 1225(b)(2)(A) governs detention of noncitizens who are actively being processed for admission and have been determined not to be clearly and beyond a doubt entitled to be admitted. It does not authorize mandatory detention of noncitizens apprehended in the interior and placed in full removal proceedings.

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[1] *See, e.g., Nava Hernandez v. Baltazar, No. 1:25-cv-03094-CNS (D. Colo.); Espinoza Ruiz v. Baltazar, No. 1:25-cv-03642-CNS (D. Colo.); Arauz v. Baltazar, No. 1:25-cv-03260-CNS (D. Colo.); Garcia Cortes v. Noem, No. 1:25-cv-02677-CNS (D. Colo.); Rodriguez Vazquez v. Bostock, No. 3:25-cv-05240 (W.D. Wash.); Gomes v. Hyde, No. 1:25-cv-11571-JEK (D. Mass.)*

As applied here, Respondents' interpretation would extend § 1225(b)(2)(A) far beyond its statutory role, foreclosing any opportunity for individualized custody review for Petitioner. Respondents' reading would also collapse the distinction Congress drew between §§ 1225 and 1226, rendering § 1226(a)'s discretionary detention and bond framework largely superfluous for a broad category of noncitizens in removal proceedings. Nothing in the text or structure of the INA supports such a result.

(a) The Phrase "Applicant for Admission" Does Not Automatically Invoke Mandatory Detention

Respondents argue that Petitioner is "subject to § 1225(b)(2)(A)" because, in their view, he is an "applicant for admission" and therefore must be detained without bond. But as the court recognized in *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo.), this analysis misunderstands both the text of § 1225 and the statutory detention framework Congress adopted in the INA.

It is true that § 1225(a)(1) defines an "applicant for admission" to include a noncitizen who is "present in the United States who has not been admitted," and that the term of art applies at the threshold of entry. But § 1225(b)(2)(A)'s mandatory detention provision applies only to those noncitizens who are seeking admission and have been determined not "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Courts have held that being "an applicant for admission" and actively "seeking admission" are distinct concepts, and that the latter requires some present-tense action to gain lawful entry. *Garcia Cortes*, No. 1:25-cv-02677-CNS.

Here, Petitioner was apprehended in the interior by ICE on December 13, 2025. He was not apprehended at a port of entry and was not engaged in any present-tense effort to gain admission at the time of his detention. Such individuals are not "seeking admission" in the sense required by § 1225(b)(2)(A), even if they lack lawful status. Accordingly, Petitioner does not fall within § 1225(b)(2)(A)'s mandatory detention provision.

(b) Rejecting Respondents' Interpretation Avoids Redundancy and Preserves the Statutory Scheme

Respondents' position would effectively erase the distinction between § 1225 and § 1226. If any noncitizen "present in the United States who has not been admitted" were automatically subject to §1225(b)(2)(A), then §1226(a)'s general detention authority, which authorizes arrest, detention, and discretionary release on bond, would be rendered superfluous.

Congress would not have created a separate discretionary detention system for non-arriving noncitizens only to have it swallowed by § 1225's mandatory framework. This is precisely the reasoning adopted in *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo.), and other decisions considering similar challenges.

(c) The Supreme Court's Discussion in *Jennings* Does Not Compel Respondents' Interpretation

Respondents rely on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), to argue that § 1225(b)(2) is a "catchall" provision. But *Jennings* did not hold that § 1225(b)(2)(A) governs the detention of all noncitizens present in the United States indefinitely, nor did it suggest that § 1225 displaces §1226(a) once removal proceedings have been initiated. To the contrary,

Jennings acknowledged the distinct statutory regimes for noncitizens "seeking admission" under § 1225 and those "already in the country" under § 1226, an observation many courts have since interpreted as supporting the natural statutory boundary between inspection -stage detention and detention during removal proceedings.

(d) Petitioner's Detention Is Governed by § 1226(a), Not § 1225(b)(2)(A)

Because Petitioner was apprehended in the interior and placed in removal proceedings, 8 U.S.C. §1226(a)'s general detention authority governs his custody. Section 1226(a) expressly authorizes discretionary release on bond based on individualized custody determinations.

Petitioner has never received an individualized custody hearing assessing flight risk or danger. Nothing in the INA authorizes that result.

(e) Respondents' Remaining Arguments—Including Reliance on the Fifth Circuit and the Parole Termination Theory—Do Not Withstand Scrutiny

Respondents rely on the Fifth Circuit's majority opinion in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), as support for their position that § 1225(b)(2)(A) governs all noncitizens present in the United States who have not been admitted. That reliance is misplaced for several reasons.

First, *Buenrostro-Mendez* is not binding on this Court. The Tenth Circuit has not addressed this question, and as Respondents themselves concede, the appeal in *Mendoza Gutierrez v. Baltazar*, No. 25-1460 (10th Cir.), remains pending. This Court is therefore not bound by the Fifth Circuit's reasoning and should follow the weight of district court authority

within this circuit, which has consistently rejected the position Respondents advance here. *See, e.g.*, *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo. Sept. 16, 2025) (holding that noncitizen apprehended in the interior and placed in removal proceedings is governed by § 1226(a), not § 1225(b)(2)(A)); *Bautista v. Noem*, No. 25-cv-00272-NYW, at 3 n.3 (D. Colo.) (same; noting that "many courts have rejected" the *Buenrostro-Mendez* majority's reasoning).

Second, the *Buenrostro-Mendez* majority's textual reasoning is unpersuasive. As explained above in Sections I(a) through I(d), the better-reasoned interpretation of § 1225(b)(2)(A) is that it applies to noncitizens being actively processed at the threshold of entry, not to those apprehended in the interior years after initial entry. The Fifth Circuit's contrary reading collapses the statutory distinction between §§ 1225 and 1226 and would effectively render § 1226(a)'s discretionary bond framework superfluous for a vast category of noncitizens—a result Congress did not intend.

Third, Respondents separately argue that Petitioner's parole terminated automatically in November 2022 under 8 C.F.R. § 212.5(e)(1) and again upon service of the Notice to Appear in December 2025 under 8 C.F.R. § 212.5(e)(2)(i), and that he therefore reverted to the status of an "applicant for admission" subject to mandatory detention under § 1225(b)(2)(A). This argument conflates the question of Petitioner's immigration classification with the separate question of which detention statute governs him now that he is in removal proceedings.

Even accepting that Petitioner's parole has terminated, it does not follow that § 1225(b)(2)(A)'s mandatory detention provision now governs his custody. Parole termination affects Petitioner's admissibility classification; it does not determine which detention framework applies to someone who has been living in the interior for years and is now subject to full

removal proceedings under 8 U.S.C. § 1229a. The detention provisions of § 1225 are designed for the inspection and admission context—they govern noncitizens being actively processed at the threshold of entry. Once a noncitizen has been placed in plenary removal proceedings in the interior, § 1226(a) is the governing detention authority, regardless of the technical label applied to that noncitizen's admissibility status. *See Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo. Sept. 16, 2025). Respondents' parole termination theory, if adopted, would mean that virtually any parolee—regardless of how long they have resided in the United States and however deep into removal proceedings they are—could be subjected to mandatory detention without any bond hearing simply because their parole was administratively terminated. Neither the text of the INA nor its structure compels that result.

II. Respondents Err in Claiming That Detention Without a Bond Hearing Satisfies Due Process

Respondents argue that Petitioner has received all the process he is due because Congress mandated detention under § 1225(b)(2)(A) and because, as an alleged "applicant for admission," Petitioner possesses only those rights Congress has conferred by statute. That argument misstates the governing law, misapplies Supreme Court precedent, and ignores the critical distinction between procedures governing admissibility and procedures governing prolonged civil detention.

The Fifth Amendment applies to all "persons" within the United States, including noncitizens physically present in the country, regardless of admission status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). While Congress has broad authority over immigration, that authority does not extend to authorizing prolonged civil detention without meaningful procedural safeguards. *Id.* at 690; *Jennings v. Rodriguez*, 583 U.S. 281, 304–05 (2018).

Petitioner does not challenge Congress's power to establish removal procedures. He challenges his continued physical detention without any opportunity for individualized custody review. Courts have repeatedly recognized that detention implicates a core liberty interest distinct from the merits of admissibility or removability. *Zadvydas*, 533 U.S. at 690.

Here, Petitioner has remained detained without any bond hearing since December 13, 2025—a period now exceeding 100 days—despite being apprehended in the interior and placed in full removal proceedings. This is precisely the kind of prolonged civil detention that implicates core liberty interests independent of any question about ultimate removability.

(a) *Thuraissigiam* Does Not Govern Prolonged Immigration Detention

Respondents rely on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), to argue that Petitioner, as an alleged "applicant for admission," possesses only those procedural rights Congress has conferred. That reliance is misplaced. *Thuraissigiam* concerned the scope of habeas review available to a recent border crosser subjected to expedited removal under § 1225(b)(1). It did not address the constitutionality of prolonged civil detention without a bond hearing.

Critically, *Thuraissigiam* did not involve extended detention, nor did it hold that Congress may detain a noncitizen indefinitely without individualized custody review simply by labeling the individual an "applicant for admission." The Court emphasized that it was not deciding the constitutional limits of detention. *Id.* at 126–27.

As the District of Colorado has recognized, constitutional analysis of detention must focus on the nature and duration of the restraint of liberty, not solely on statutory labels. *See Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo. Sept. 16, 2025)

(b) Petitioner Need Not Show Deprivation of a Statutory Right to Establish a Due Process Violation

Respondents incorrectly assert that Petitioner must identify the denial of a statutory right to establish a procedural due process violation. That is not the law. The Constitution independently requires adequate procedures where government action results in a significant deprivation of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).

Here, Petitioner's claim is straightforward: he has been subjected to prolonged civil detention without any opportunity to seek release based on individualized factors such as flight risk or danger. The absence of a bond hearing is itself the constitutional injury. Courts have consistently recognized that due process may require procedural protections beyond those expressly enumerated by statute. *Zadvydas*, 533 U.S. at 690; *Jennings*, 583 U.S. at 305–06.

Respondents' prejudice argument fails for the same reason. Petitioner does not allege error in the conduct of his removal proceedings; he challenges the lack of any mechanism to contest the necessity of his continued detention. A bond hearing addresses a fundamentally different question—whether detention remains justified—not whether removal is ultimately warranted. Requiring Petitioner to show that a bond hearing would alter the outcome of his removal case misunderstands the nature of the due-process claim.

(c) *Demore v. Kim* Does Not Justify Petitioner's Detention

Respondents' reliance on *Demore v. Kim*, 538 U.S. 510 (2003), is likewise misplaced. *Demore* upheld mandatory detention under § 1226(c) for a narrow class of noncitizens convicted of certain serious crimes, and it did so based on two critical assumptions: that detention would be

brief and that detainees had already received substantial procedural protections through the criminal process. *Id.* at 528–30.

Neither assumption applies here. Petitioner is not subject to criminal mandatory detention, has not been convicted of any qualifying offense, and is detained solely under a civil immigration statute. Subsequent Supreme Court decisions have clarified that *Demore* does not authorize prolonged detention without individualized review. *Jennings*, 583 U.S. at 304–05; *Zadvydas*, 533 U.S. at 690.

Respondents' assertion that detention here has a "definite termination point" fares no better. Removal proceedings-particularly where noncitizens pursue statutorily authorized relief-often last many months or years. The speculative prospect of eventual resolution does not cure the constitutional infirmity of prolonged detention without a bond hearing. See Jennings, 583 U.S. at 315 (Breyer, J., dissenting).

(d) Due Process Requires an Individualized Bond Hearing

Because Petitioner has been subjected to prolonged civil detention without any opportunity for individualized custody review, due process requires a bond hearing before a neutral decisionmaker at which the government bears the burden of justifying continued detention. This conclusion is consistent with the fundamental principle that civil detention must bear a reasonable relation to its purpose. *Zadvydas*, 533 U.S. at 690.

Nothing in the Constitution permits categorical detention untethered from any individualized determination of necessity. Respondents' reliance on the Immigration Judge's lack of jurisdiction misses the point. Due process is not satisfied by the absence of a forum.

Where no adjudicator is empowered to assess the necessity of continued detention, the constitutional violation is complete.

III. Relief

Petitioner seeks habeas relief from unlawful detention. Where detention violates the INA or the Due Process Clause, the appropriate remedy is an order requiring the government to provide constitutionally adequate procedures, including an individualized bond hearing before a neutral decisionmaker.

Respondents argue that even if the Court finds a statutory or constitutional violation, Petitioner is not entitled to relief. That position is incorrect. Federal courts have broad authority in habeas to remedy unlawful detention, including by ordering a bond hearing where the absence of such a hearing is the source of the constitutional injury.

The proper remedy for a due process violation stemming from prolonged detention without individualized custody review is not continued detention, but additional process. A bond hearing provides the mechanism by which the government may justify continued detention and by which the detainee may seek release based on individualized circumstances.

Here, Petitioner has been detained since December 13, 2025, without any bond hearing, solely because the Immigration Judge concluded that the court lacked jurisdiction to conduct a custody redetermination. That absence of process is the precise injury Petitioner challenges.

At a constitutionally adequate bond hearing, the government must bear the burden of establishing that continued detention is justified by flight risk or danger. Absent such a showing, continued detention serves no regulatory purpose and violates due process.

Nothing in the INA forecloses this relief. To the contrary, where detention is governed by § 1226(a), Congress expressly contemplated individualized custody determinations. And where detention under § 1225(b)(2)(A) becomes prolonged and untethered from its entry-related purpose, the Constitution requires additional procedural safeguards.

Accordingly, the Court should grant the writ and order Respondents to provide Petitioner with an individualized bond hearing before a neutral decisionmaker, at which the government bears the burden of justifying continued detention by clear and convincing evidence.

IV. Conclusion

For the foregoing reasons, the Court should reject Respondents' interpretation of 8 U.S.C. § 1225(b)(2)(A) and conclude that Petitioner's detention is governed by 8 U.S.C. § 1226(a). Petitioner was apprehended in the interior and placed in full removal proceedings. Continued detention under an inspection-stage statute is no longer tethered to any determination regarding admissibility at the threshold of entry. Respondents effectively concede that this case is controlled by this Court's prior rulings, acknowledging that "the facts of this case are not materially distinguishable" from cases in which this Court has rejected their position.

Petitioner has never received an individualized custody determination assessing flight risk or danger, leaving Petitioner detained without any forum empowered to assess the necessity of his continued confinement. Neither the INA nor the Constitution permits prolonged civil

detention in the absence of any mechanism for individualized review. Respondents' position would allow the government to subject any noncitizen who was ever not formally admitted to indefinite mandatory detention—regardless of how long they have lived in the United States—without any opportunity for individualized review. Neither the INA nor the Constitution permits that result.

Accordingly, the Court should grant the petition for a writ of habeas corpus and order Respondents to provide Petitioner with an individualized bond hearing before a neutral decisionmaker, at which the government bears the burden of justifying continued detention.

Dated: March 25, 2026

Respectfully submitted,

/s/Jonathon Bell

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