IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-3017-GPG-TPO

KHRISTYNE BATZ BARRENO,

Petitioner,

v.

JUAN BALTAZAR, *et al.*,

Respondents.

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

In the 15 months Khristyne Batz Barreno has been detained by Respondents, a lot has changed: she has been moved from Texas to Colorado to Wyoming and back to Colorado again, shuffled between being jailed with transgender women and cisgender men; even Respondents' claimed basis for detaining her has been a moving target, shifting from 8 U.S.C. § 1226(a) to § 1225(b). *See* Dkt. 14 at 6 ("In September 2025 … ICE began detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A)."). But through it all, one fact has never changed: to date, she has never received a constitutionally adequate bond hearing.

Respondents' response to her habeas petition recites the same tired arguments that have been rejected by nearly every – if not every – district court to consider them, including multiple courts in this district. Specifically, Respondents argue that the Court "lacks jurisdiction" over this habeas petition – a claim for which they cite not a single case in support – and contend that Ms.

Batz is detained under § 1225(b), a statute applying to the admission of noncitizens at the border, an argument which has been rejected by dozens upon dozens of courts all over the country, including by at least three jurists in this district.

In fact, this Court's opinion just yesterday in *Moya Pineda v. Baltasar*, 25-cv-2955-GPG, Dkt. 21 (Oct. 20, 2025) is dispositive of every issue in this case. In *Moya Pineda*, a noncitizen who had been detained for three months was granted a bond hearing at which the Government bears the burden of justifying his detention; in this case, where Ms. Batz has been detained *five times as long*, the result should be the same. *See id.* at 4. In that case, the Court rejected every argument Respondents make here, and Respondents offer no compelling justification for a different outcome this time around.

ARGUMENT

I. This Court has jurisdiction.

Respondents first argue that this Court lacks jurisdiction because 8 U.S.C. § 1252(a)(5) provides for challenges of removal orders through a petition for review in the court of appeals and § 1252(b)(9) "deprive[s] district courts of jurisdictions to hear such a challenge." Dkt. 14 at 8. This Court gave short shrift to this exact same argument in *Moya Pineda*, noting that "[t]hese arguments have been considered and rejected by other Judges in this District … Respondents make no attempt to distinguish the authority rejecting their arguments. The Court finds the prior decisions from this District … entirely persuasive and adopts their analysis." *Moya Pineda*, 25-cv-2955, Dkt. 21 at 3. As Judge Rodriguez explained last week, "There are two flaws in Respondents' argument." *Mendoza Gutierrez v. Baltasar*, 25-cv-2720-RMR (D. Colo. Oct. 17, 2025), Dkt. 33 at 6. "First, 8 U.S.C. § 1252(a)(5) has a specific carve out for" habeas corpus

cases, and "[h]ere, [Petitioner] is seeking a review of [her] detention, not a removal order. No removal order has been issued." *Id.* at 7. And second, numerous "courts have rejected Respondents' [jurisdictional] arguments because Petitioner's claims 'are legal in nature and challenge specific conduct unrelated to removal proceedings.'" *Id.* (citing *Garcia Cortes v. Noem,* No. 25-cv-2677-CNS, 2025 WL 2652880, at *2 (D. Colo. Sept. 16, 2025)). Indeed, as *Mendoza Gutierrez* notes, even the Supreme Court has made clear there is no jurisdictional bar: "[R]espondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal … Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar." *Id.* (citing *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018)).

II. Ms. Batz is not detained under § 1225(b).

Respondents next argue that Ms. Batz is an "applicant for admission" and "[t]hus, she falls within the scope of Section 1225(b)(2)(A)." Dkt. 14 at 11. However, it appears that every court in the country to consider this issue – dozens upon dozens of them – has rejected it, including courts in this district. *See Moya Pineda*, 25-cv-2955, Dkt. 21 at 3 ("Because Petitioner was not detained while attempting to enter the country … [he] is not subject to § 1225(b)(2)(A)'s mandatory detention provision") (internal quote marks omitted); *Mendoza Gutierrez*, 25-cv-2720-RMR, Dkt. 33 at 22 ("the Court is persuaded that Petitioner is likely to succeed on the merits that he is unlawfully detained under 8 U.S.C. § 1225 and that § 1226 actually … governed Petitioner's detention from the outset"); *Garcia Cortes*, 2025 WL 2652880, at *3 ("Because Petitioner is not, nor was he at the time he was arrested, 'seeking admission,' § 1225(b)(2)(A)'s mandatory detention provision does not apply."). A chorus of district courts from all over the

country has joined courts in this district in rejecting these same arguments.[1]

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[1] The following is only a partial list of the courts to reject Respondents' arguments: *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, -- F. Supp. 3d --, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa et al.*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, -- F. Supp. 3d --, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, -- F. Supp. 3d --, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Larysa Kostak v. Trump et al.*, 25-CV-1093 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Francisco T. v. Bondi*, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, -- F. Supp. 3d --, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley,* 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Velasquez Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Brito Barrajas v. Noem*, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025); *Valencia Zapata v. Kaiser*, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Zumba v. Noem*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Tocagon v. Moniz*, 2025 WL 2778023 (D. Mass. Sept. 29, 2025); *Romero-Nolasco v. McDonald*, 2025 WL 2778036 (D. Mass. Sept. 29, 2025); *J.U. v. Maldonado*, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Rodriguez v. Bostock*, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Eliseo A.A. v. Olson*, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *De Andrade v. Moniz*, -- F. Supp. 3d --, 2025 WL 2841844 (D. Mass. Oct. 7, 2025); *Hyppolite v Noem*, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025).

III. Ms. Batz is entitled to a bond hearing at which Respondents bear the burden of proof.

In her Petition, Ms. Batz argued that due process requires a new bond hearing, for two reasons. First, the original bond hearing she received at an early stage of her detention did not comport with due process, since it required her to prove two negatives – that she was neither a danger nor a flight risk. Dkt. 1 at 16-25. Second, even if putting the burden of proof on her at the beginning of her detention were justifiable, the prolonged nature of her detention – now 15-plus months and counting – requires reassessment of whether her detention continues to serve a constitutionally permissible purpose. Dkt. 1 at 25-31.

The Supreme Court "has consistently held the Government to a standard of proof higher than a preponderance of the evidence where liberty is at stake, and has reaffirmed a clear and convincing evidence standard for various types of civil detention." *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020). A district court in Illinois recently observed that, "When granting immigrant detainees' habeas petitions, an 'overwhelming consensus' of courts have placed the burden on the government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025), at *8 (citing cases from the First, Second, Third, and Ninth Circuits and several district courts); *see also L.G. v. Choate*, 744 F. Supp.3d 1172, 1186 (D. Colo. 2024) (recognizing that "the rights of noncitizens are not the same as citizens" but nonetheless concluding that due process requires the burden to be on the Government). Here, no one has ever shown that Ms. Batz is either a danger or a flight risk; she was denied bond merely because she could not prove two negatives. Accordingly, under this district's opinion in *L.G.* and the numerous other cases cited in her Petition, Ms. Batz is entitled to a hearing at which the Government bears the burden of proof. Dkt. 1 at ¶ 55.

Even if this Court were to find that the bond hearing she received at the outset of her detention satisfied due process, it does not follow that the same standard should apply after 15 months of detention. "'[A]s the period of … confinement grows,' so do the required protections no matter what level of due process may have been sufficient at the moment of initial detention." *Velasco Lopez*, 978 F.3d at 853 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)); *see also* Dkt. 1 at 25-31. Here, too, this Court's opinion yesterday in *Moya Pineda* is dispositive: in that case, the Court held that the petitioner was entitled to an *initial* bond hearing under § 1226(a) "at which Respondents bear the burden of proof of showing his continued detention is proper." *Moya Pineda*, 25-cv-2955, Dkt. 21 at 4. In this case, Ms. Batz has been detained for 15 months without e*ver* receiving the bond hearing this Court ordered Respondents to provide Mr. Moya Pineda after only three months of detention. If that petitioner was entitled to a bond hearing where Respondents bear the burden of proof, then so too is Ms. Batz. Other courts in this district also agree. *See Mendoza Gutierrez*, 25-cv-2955, Dkt. 21 at 25 (burden on Government); *Garcia Cortes*, 2025 WL 2652880, at *5 (same); *L.G.,* 744 F. Supp. 3d at 1186 (same).

Respondents cite *Bonilla Espinoza v. Ceja*, 25-cv-1120 (D. Colo. May 21, 2025) to argue that "Petitioner, as an applicant for admission, is entitled only to the process Congress has conferred on [her] by statute … § 1225(b) … does not create a statutory right to a bond hearing." Dkt. 14 at 12. But this Court has already explained that *Bonilla Espinoza* is inapposite here: "That case, unlike this one, dealt with a circumstance where the statutory scheme allowed for detention without hearing … In this instance, the statutory scheme requires Petitioner be provided a bond hearing." *Moya Pineda*, 25-cv-2955, Dkt. 21 at 4, n.3. Respondents' other arguments against a bond hearing are all premised on their mistaken belief that § 1225(b) applies

to Ms. Batz's detention. Dkt. 14 at 11-13. But since – as she has argued above and as this Court and other courts in this district have ruled – § 1225(b) does not apply here, these arguments are all misplaced and unavailing.

Finally, Respondents argue that if this Court grants Ms. Batz a new bond hearing, the Government should not be required to justify her detention. Dkt. 14 at 13-15. Again, *Moya Pineda* and other cases in this district have already settled this question. In any event, the cases Respondents cite either have nothing to do with who should bear the burden at a bond hearing or they weigh against Respondents' arguments. For example, *Diaz-Ceja v. McAleenan*, 2019 WL 2774211 (D. Colo. July 2, 2019), cited by Respondents, was another case from this district requiring the Government to bear the burden of proof at a bond hearing. *Id.* at *15. Respondents cite *Jennings* for the proposition that "requiring the government to bear the burden of proof at bond hearings … is 'clearly contrary' to the text of [the] statute." Dkt. 14 at 15 (citing *Jennings*, 583 U.S. at 306). But *Jennings* did not address the constitutional due-process issue: "[T]he Court of Appeals … had no occasion to consider respondents' constitutional arguments on their merits … we remand the case to the Court of Appeals to consider them in the first instance. … [D]ue process is flexible, we have stressed repeatedly, and it calls for such procedural protections as the particular situation demands." *Id.* at 312, 314 (internal quote marks omitted). In other words, the Supreme Court determined only that the statute's plain text did not mandate a burden shift; it did not decide whether, on an as-applied basis, constitutional due-process principles might require it. Nor did the Court address who should bear the burden of proof at a bond hearing in the other cases cited by Respondents, *Reno v. Flores*, 507 U.S. 292, 306 (1993), *Carlson v. Landon*, 342 U.S. 524, 538 (1952), or *Zadvydas*. Dkt. 14 at 15.

Given that the Supreme Court has never weighed in clearly on the issue, while numerous courts at the circuit and district levels, including several in this district (as well as this Court in particular) have found that due process requires that the Government bear the burden of proof at a § 1226(a) hearing, Ms. Batz respectfully suggests that the Court should follow that approach here and require Respondents to justify her ongoing detention.

As a final matter, Respondents claim Ms. Batz served one day in jail for driving while intoxicated, and also served 28- and 27-day sentences for other misdemeanors. Dkt. 14-1 at 2-3. This is based on an unsigned affidavit, making the claims of no evidentiary value. *See Adams v. C3 Pipeline Construction, Inc.*, 30 F.4th 943, 975 (10th Cir. 2021) ("An unsigned affidavit does not constitute evidence under Fed. R. Civ. P. 56(e).") In any event, whether these misdemeanor infractions show she is a danger or flight risk is a question for the bond hearing; the Government can submit evidence of these alleged convictions as part of its burden to show her detention is justified, but it has no bearing on the legal or constitutional issues before this Court.

CONCLUSION

The Court should grant Ms. Batz's petition and order a bond hearing at which Respondents bear the burden of demonstrating her ongoing detention is justified.

Dated: October 21, 2025

Respectfully submitted,

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Certificate of Service

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 21st day of October, 2025, which sent notice of such filing to all parties.

/s/ James D. Jenkins
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