

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03040-RBJ  
**HUGO CERVANTES ARREDONDO**,  
Petitioner,

v.

**JUAN BALTAZAR**, Warden, Aurora Contract Detention Facility,  
**ROBERT GUADIAN**, Field Office Director, Denver, U.S. Immigration and Customs  
Enforcement,  
**KRISTI NOEM**, Secretary, U.S. Department of Homeland Security,  
**TODD LYONS**, Director, U.S. Immigration and Customs Enforcement, and  
**PAMELA BONDI**, Attorney General of the United States,  
Respondents.

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**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO COURT'S ORDER TO  
SHOW CAUSE AND THE COURT'S MINUTE ORDER, ECF NO. 18**

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This court should join the chorus of federal courts in Colorado and across the country to find respondents' interpretation of the Immigration and Nationality Act ("INA")'s detention provisions illegal, and grant *habeas* relief to Mr. Cervantes Arredondo. He is not subject to mandatory detention under 8 U.S.C. § 1226(c)(1) because his statute of conviction is overbroad and indivisible. He is facing ongoing irreparable harm every day that he is held in detention without a bond hearing.

**I. Respondents' assertion that Mr. Cervantes Arredondo is subject to mandatory detention under section 1226(c)(1) does not affect relief in this case because Respondents' assertion is wrong.**

Respondents assert that Mr. Cervantes Arredondo falls under section 1226(c) mandatory detention for a state conviction relating to a federally-controlled substance, citing only the relevant removal ground as support. ECF No. 17 at 9 (citing 8 U.S.C. § 1182(a)(2)(A)(II) and 8 U.S.C. 1226(c)). Would that it were so simple.

Like in federal sentencing, courts use the categorical approach to determine whether a state conviction qualifies under a federal removal ground in the immigration law. *See, e.g., Mellouli v. Lynch*, 575 U.S. 798, 805 (2015). This approach requires that the elements of the state offense not be broader than the federal analogue. *See Descamps v. United States*, 570 U.S. 254, 257 (2013). The removal ground that Respondents cite requires the state conviction to be related to a federally-controlled substance. *See* 8 U.S.C. §§ 1182(a)(2)(A)(i)(II), and 1227 (a)(2)(B)(i) (specifying that a “controlled substance” is “as defined in section 802 of Title 2”); *Johnson v. Barr*, 967 F.3d 1103, 1106 (10th Cir. 2020). Mr. Cervantes Arredondo’s conviction is for use of a Colorado-controlled substance. *See* C.R.S. § 18-18-404(1)(a). So, relying on the federal removal ground alone, there would remain a question of whether Mr. Cervantes Arredondo’s conviction required a substance that was federally controlled and not just controlled under Colorado law.

Tenth Circuit precedent on the federal controlled-substance removal ground and Colorado law clearly answers this question: Mr. Cervantes Arredondo is not subject to that ground. C.R.S. § 18-18-404(1) is overbroad, and indivisible. The Tenth Circuit has held this offense’s sister statute, C.R.S. § 18-18-403.5, which has a more serious penalty, is overbroad, indivisible, and not a controlled substance offense under federal immigration law. *Johnson*, 967 F.3d at 1110. This is because that Colorado statute criminalizes possessing morpholine, a substance that is not federally controlled. *Id.* at 1106. Section 18-18-404(1) is overbroad for the same reason: it encompasses morpholine (although via mere use, rather than possession). C.R.S. § 18-18-404(1) (referencing controlled substances); C.R.S. § 18-18-102 (5) (defining controlled substances as a drug contained included in schedules I through V of part 2 of this article); C.R.S. § 18-18-204 (Listing schedule II substances, including morpholine).

*Johnson* similarly shows why C.R.S. § 18-18-404(1)(a) is indivisible. In *Johnson* the Tenth Circuit found the specific identity of the controlled substance was not a divisible element of C.R.S. § 18-18-403.5. *See* 967 F.3d at 1107-09. The Tenth Circuit reasoned that the statutory language did not require proof of or name a specific substance, specifying only the schedule (I or II). *Id.* at 1107-08. The statutory punishment similarly did not require proof of the identity of the controlled substance, distinguishing punishment solely based on schedule. *Id.* at 1109. Here, section 404(1)(a) does not list or require proof of a particular substance: the statute says only “controlled substance” and does not even specify a schedule. Additionally, the punishment does not dictate proof of the particular substance as an element: there is no delineated punishment for a particular controlled substance nor even a schedule. Therefore, C.R.S. § 18-18-404(1)(a) is indivisible.

Thus, Mr. Cervantes Arredondo is not subject to mandatory detention under § 1226(c). The Court should instead find that he is detained under § 1226(a), not § 1226(c) or § 1225. Because § 1226(a) provides a statutory right to a bond hearing, he is entitled to a bond hearing.

**II. Judges in this district agree that persons in Mr. Cervantes Arredondo’s position are subject to § 1226(a) discretionary detention.**

Respondents’ interpretation of § 1225 is “contrary to the agency’s own implementing regulations; its published guidance; the decisions of its immigration judges (until very recently); decades of practice; the Supreme Court’s gloss on the statutory scheme; and the overall logic of our immigration system.” *Loa Caballero v. Baltazar*, 1:25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. October 22, 2025) (citing *Romero v. Hyde*, 2025 WL 2403827 at \*4 (D. Mass. Aug. 19, 2025)).

As Judge Gallagher stated, Respondents “raise essentially identical arguments to those that they raised in prior cases in this District”. In each of those cases, courts have sided with the

petitioner.<sup>1</sup> See *Mendoza Gutierrez*, 1:25-cv-02720-RMR (granting petitioner’s motion for TRO and stating “that § 1225(b)(2) only applies to noncitizens ‘seeking admission’ and inspected while trying to enter the country, and not to noncitizens who have lived in the United States continuously for over two years”); *Moya Pineda*, No. 25-cv-02955-GPG (holding that because the petitioner was not detained while attempting to enter the country 1225(b)(2)(a) does not apply); *Loa Caballero*, 2025 WL 2977650 (joining “numerous courts across the country” and holding that noncitizens who are present in the U.S. without being admitted or paroled are not subject to § 1225(b)(2)(a)).

Additionally, in identical cases in this district, both Judge Wang and Judge Rodriguez determined that Respondents’ interpretation would render parts of the INA superfluous. *Id.* at \*7 (stating that respondents’ interpretation would “require the Court to disregard well-settled principles of statutory interpretation”); *Mendoza Gutierrez*, 1:25-cv-02720-RMR at 17-18. The respondents do not dispute this argument, stating only that “redundancies are common in statutory drafting”. ECF No. 17 at 15.

Respondents rely on *Jennings* to support their statutory interpretation; however, Respondents’ interpretation of § 1225 is “contrary to its plain language”. *Loa Caballero*, 2025 WL 2977650 at \* 6. Drawing on the Supreme Court’s holding in *Jennings*, and multiple federal

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<sup>1</sup> Perhaps one reason that judges are overwhelmingly siding with Petitioners in this district is because Respondents have yet to convincingly explain why its agents have suddenly shifted gears. Here, respondents ignore Mr. Cervantes Arredondo’s argument highlighting decades of BIA precedent. See, e.g. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025) (assuming jurisdiction to redetermine custody of a noncitizen who entered without inspection and affirming denial of bond on discretionary consideration); see also *Matter of D-J-*, 23 I. & N. Dec. 572 (2003) (same); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803 (BIA 2020) (same). The Respondents ignore Mr. Cervantes Arredondo’s argument in this regard. When a party fails to address an opposing argument in its reply, it effectively concedes the point as a practical matter. See *Cayetano-Castillo v. Lynch*, 630 F. App’x 788, 794 (10th Cir. 2015).

court opinions, Judge Wang held that “the plain meaning of the phrase “seeking admission” requires that the applicant must be presently and actively seeking lawful entry into the United States.” *Id.*; see also *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at \*6 (E.D. Mich. Aug. 29, 2025) (holding that the use the present participle in § 1225(b)(2)(A) implies action) and *Martinez v. Hyde*, No. 25-cv-11613-BEM, 2025 WL 2084238, at \*6 (D. Mass. July 24, 2025) (“[T]he phrase ‘seeking admission’ is undefined in the statute but necessarily implies some sort of present-tense action.”). Similarly, Judge Rodriguez relied on language from *Jennings* to hold that “§ 1226(a) is intended for the apprehension and detention of [noncitizens] ‘already in the country.’” *Mendoza Gutierrez v. Baltasar*, 1:25-cv-02720-RMR (citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018)). Further, while respondents are correct in stating that § 1225(b)(2) may be broader than § 1225(b)(1), “that does not mean that § 1225(b)(2) applies to all other noncitizens in the United States who have not been admitted.” *Loa Caballero*, 2025 WL 2977650 at \* 6.

**III. Mr. Cervantes Arredondo faces ongoing irreparable harm, and Respondents’ argument to the contrary misstates the nature of the injury.**

Respondents’ contention that Mr. Cervantes Arredondo’s detention cannot constitute irreparable harm not only misapprehends the governing law but also minimizes the severe hardship of being unjustly confined without recourse. The Tenth Circuit’s definition of irreparable harm as “certain, great, actual, and not theoretical,” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003), does not exclude unlawful detention from its reach. To the contrary, courts repeatedly recognize that the deprivation of physical liberty, particularly where it is likely unconstitutional, is a paradigmatic example of irreparable injury. *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (finding that likelihood of unconstitutional deprivation of physical liberty satisfied burden as to irreparable harm); *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1262, (W.D. Wash. 2025) (Detention causes “potentially irreparable harm every day [one] remains in custody”). Respondents’ reliance on an out-of-district case raises a red herring. *Abshir*

*H.A. v. Barr*, 19-cv-1033 (PAM/TNL), 2019 WL 3292058, at \*4 (D. Minn. May 6, 2019), report and recommendation adopted by *Abi v. Barr*, 2019 WL 2463036 (D. Minn. June 13, 2019); ECF No. 17 at 25. Mr. Cervantes Arredondo does not claim that detention alone establishes irreparable harm. Rather, he demonstrates that his civil detention without a statutorily-required bond hearing inflicts unique and ongoing harm that is both “certain” and “great.” *Heideman*, 348 F.3d at 1189. His confinement now exceeds 123 days in a facility a judge in this District has described as “abhorrent” and “strongly resembl[ing] penal confinement.” *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at \*7 (D. Colo. Aug. 8, 2025).

Additionally, Respondents’ attempt to attribute Mr. Cervantes Arredondo’s family’s suffering to his past criminal conduct is misplaced. ECF No. 17 at 25 (“that hardship is primarily a result of Petitioner’s criminal activity, not Respondents’ enforcement of the law”). The issue before this Court is not the propriety of his prior arrest, but his ongoing and unconstitutional civil confinement. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (freedom from imprisonment lies at the heart of the liberty the Fifth Amendment protects). Mr. Cervantes Arredondo served his two-week sentence for the state charge months ago. Yet, he has now spent 123 days in detention without a bond hearing. Respondents’ attempt to shift the blame onto Mr. Cervantes Arredondo’s brief criminal custody misconstrues the real issue, which is the government’s ongoing civil detention without a bond hearing.

Respondents’ argument regarding past criminal conduct also ignores the broader harms their detention of Mr. Cervantes Arredondo inflicts on his ability to prepare and present his case. His removal case continues to advance rapidly on the detained docket, with his individual hearing set for November 4. From detention, Mr. Cervantes Arredondo has faced difficulty gathering corroborating evidence that will help bolster his claim, further jeopardizing his ability to present his case. *See Barker v. Wingo*, 407 U.S. 514, 532–33 (1972) (recognizing the severe

personal and practical harms of confinement while awaiting adjudication). Respondents' argument to the contrary should be rejected.

The proper statute of detention for Mr. Cervantes Arredondo is § 1226(a) discretionary detention. He is not subject to mandatory detention under § 1226(c) because his conviction does not subject him to a controlled substance removal ground. Further, consistent with numerous federal court decisions, Mr. Cervantes Arredondo is not subject to mandatory detention under § 1225. He is constitutionally entitled to a bond hearing and suffers irreparable harm every day he is in detention without one.

Dated: October 28, 2025

Respectfully submitted,

/s/ Elizabeth Jordan

Elizabeth Jordan

John Hathaway

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#### **CERTIFICATE OF SERVICE**

I certify that on October 28, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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