IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03260-CNS-CYC

OSCAR ARTOLA ARAUZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden of the Aurora ICE Processing Center,

ROBERT GAUDIAN, in his official capacity as Field Office Director, Denver, U.S. Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

TODD LYONS, in his official capacity as Acting Director Immigration and Customs Enforcement,

PAMELA BONDI, in her official capacity as Attorney General of the United States, in her official capacity,

Respondents.

PETIONER'S REPLY TO RESPONDENTS' CONSOLIDATED RESPONSE

This Court, following the lead of courts across the country and in this very district, should grant preliminary relief to Mr. Oscar Artola Arauz ("Petitioner") and grant *habeas* relief due to Respondents' dangerously incompetent medical care and illegal detention of Petitioner.

I. Introduction

Since Petitioner filed this case, federal courts across the country, including this Court, have come to a sweeping consensus that Respondents' policy to deny a bond hearing to anyone who entered the country without inspection is unlawful.

Nonetheless, Respondents continue to attempt to convince this Court with the same arguments. The Court should add this case to the "growing list of formal challenges to the Government's interpretation and application of §§ 1225 and 1226" where courts across the nation "have overwhelmingly rejected respondents' 'broad interpretation of section 1225(b)(2).'" *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025). Petitioner respectfully requests that this Court grant Petitioner *habeas* relief due to his continued illegal detention and grant Petitioner a preliminary injunction due to Respondents' alarming medical neglect.

II. This Court has jurisdiction to grant the requested relief.

Respondents hopelessly mischaracterize the nature of Petitioner's challenge. ECF 13 at 7. Petitioner has not challenged his removal order, which does not exist. The Petitioner has only challenged the legality of his mandatory detention without a bond hearing. The Supreme Court, the Tenth Circuit, and even this Court have all held that jurisdiction is proper in this case.

In *Demore v. Kim*, the Supreme Court determined that INA jurisdictional bars are not applicable when noncitizens challenge the statutory framework permitting detention without bail. 538 U.S. 510, 517 (2003). This notion was reaffirmed in *Jennings v. Rodriguez*. 583 U.S. 281,

293 (2018) (noting it would be "absurd" not to give jurisdiction over claims of illegal detention as that would functionally make claims about mandatory detention "unreviewable.").

8 U.S.C. § 1252(a)(5) explicitly does not prohibit any "habeas corpus provision." *Reno v. Am.-Arab anti-Discrim. Comm.*, 525 U.S. 471, 487 (1999). It exclusively governs a final removal order. *Id.* Also, when noncitizens "are not asking for review of an order of removal" but instead are "challenging the decision to … deny them bond hearings," "§ 1252(b)(9) does not present a jurisdictional bar." *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (citing *Jennings*, 583 U.S. at 294-95) (cleaned up). In short, the Supreme Court has repeatedly ruled on the merits of habeas corpus claims by detained noncitizens after announcing their jurisdiction to do so. This Court should follow suit.

Respondents further dig themselves a hole by mischaracterizing Congress' intent in their argument. In actuality, when Congress added section 1252(b)(9) to the INA, it stated "nothing in the amendment would preclude habeas review over challenges to detention" – which is precisely the claim here. *Kong v. U.S.*, 62 F.4th 608, 614 (1st Cir. 2023) (citing H.R. Rep. No. 109-72, at 175 (2005) (Conf. Rep.)) (cleaned up). The Tenth Circuit found that, "Congress did not intend the zipper clause 'to cut off claims that have a tangential relationship with pending removal proceedings.' ... A claim only arises from a removal proceeding when the parties in fact are challenging removal proceedings." *Mukantagra v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113, 116 (10th Cir. 2023). *This* Court has also rejected Respondents' argument in *Garcia Cortes*, correctly pointing out that these claims are "legal in nature" as they challenge conduct that is not related to removal proceedings. *Garcia Cortes*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *2 (D. Colo. Sept. 16, 2025) (citing *Mukantagara v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113, 1116 (10th Cir. 2023)). *See also, Gutierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908 (D.

Colo. Oct. 17, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar*, No. 25-cv-02955, ECF 18 (D. Colo. Oct. 20, 2025). Petitioner requests that the Court continue the clear trend in finding that jurisdiction is proper in this case.

III. The Court should find that Petitioner's statute of detention is 8 U.S.C. § 1226(a), making his detention discretionary not mandatory.

Respondents' claims regarding the plain-text reading of 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) fights against a strong headwind of court orders that have granted *habeas* relief after rejecting those arguments. *See e.g., Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, *3 (D. Colo. Sept. 16, 2025); *Gutierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908, *8 (D. Colo. Oct. 17, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, *8 (D. Colo. Oct. 22, 2025); *Jose J.O.E. v. Bondi*, --- F. Supp.3d ----, No. 25-cv-3051, 2025 WL 246670 (D. Minn. Aug. 27, 2025); *Vasquez Garcia et al. v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Doe v. Moniz*, No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Francisco T. v. Bondi*, --- F. Supp.3d ----, No. 25-cv3219, 2025 WL 2629839 (D. Minn. Sept. 5, 2025). *See also Palma Perez v. Berg*, --- F.Supp.3d --- , 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921, 2025 WL 2533110 (N.D. Cal Sept. 3, 2025); *Lopez Santos v. Noem*, 25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Velasquez Salazar v. Dedos*, No. 1:25-cv-835, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Lamidi v. FCI Berlin*, No. 25-cv-297, ECF 14 (D. N.H. Sept. 15, 2025); *Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910

(E.D. Cal. Sept. 23, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, ECF 31 (D. N.J. Sept. 26, 2025).

In the Federal District of Colorado, court after court has granted habeas relief to noncitizens who Respondents argue are detained pursuant to section 1225. In *Loa Caballero*, the court writes, ". . . courts have overwhelmingly rejected Respondents' 'broad interpretation of section 1225(b)(2).'" *Loa Caballero*, 2025 WL 2977650, *5. More specifically, the order in *Moya Pineda* clearly states, "[b]ecause Petitioner was not detained while attempting to enter the country and does not have other circumstances that would subject him to mandatory detention, 'Petitioner is not subject to § 1225(b)(2)(A)'s mandatory detention provision,' and 'Respondents were wrong to detain him without an opportunity to seek release on bond.'" *Moya Pineda v. Baltasar*, No. 25-CV- 02955, ECF 18 (D. Colo. Oct. 20, 2025) (citing *Garcia Cortes*, 2025 WL 2652880, at *2-3). These courts and many others have affirmed that Section 1226 is the proper statute of detention for Petitioner. The orders from the District of Colorado affirmatively state section 1226 is the proper statute of detention for individuals such as Petitioner, who are not "seeking admission" under section 1226. For example, the *Loa Caballero* court states, ". . . because Petitioner is detained under § 1226(a), his present detention without a bond hearing violates the INA." 2025 WL 2977650, *8.

Indeed, the Respondents' own declaration states Petitioner was detained by ICE on June 12, 2025 under Section 1226. ECF 13-1 at ¶ 14. The *Loa Caballero* court noted when addressing this very issue, ". . . Respondents' treatment of Petitioner appears to conflict with their assertion that he is detained pursuant to § 1225." 2025 WL 2977650, at *8. It beggars belief that Respondents can make claims they do regarding the plain text interpretations of the statute, when their own enforcement agencies have interpreted them to place noncitizens such as Petitioner in

discretionary detention under section 1226 for decades. *See also Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025) (assuming jurisdiction to redetermine custody of a noncitizen who entered without inspection); *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).

This Court should follow the plain text reading of the statutes[1], the barrage of court orders across the nation and in this very district, and the decades of precedent in finding that Petitioner's statute of detention is in fact section 1226(a).

IV. Mr. Artola Arauz's medical condition remains an emergency, and he is at risk of irreparable harm.

Respondents argue that there is no need or justification for injunctive relief because the Petitioner has not established irreparable harm and therefore has not established a balance of equities weighing strongly in his favor. Their arguments offer cherry-picked facts related to the lackadaisical medical care Petitioner has received along with vague notions of harm to the Government. Respondents' assertions do not hold weight against a Petitioner whose life is in danger due to the abysmal medical care in the Aurora detention center. Ex. 1 at 3.

A. The past harm Petitioner has endured in immigration detention foreshadows his irreparable harm if he is not released from Respondents' custody.

Respondents argue that because the "[t]he purpose of a preliminary injunction is not to remedy past harm . . ." that past harm is irrelevant. ECF 13 at 24 (citation omitted). The Respondents further state that the Petitioner's argument fails because "he is receiving medical care" then proceeds to dismiss any mention of past poor treatment as irrelevant. ECF 13 at 23. Here, the past is prologue. Mr. Artola Arauz has been nominally "receiving medical care" since

[1] *See* ECF 1 at ¶¶ 38-48.

he arrived, leading to two trips to the emergency room and a 10-day hospital stay. This was all for heart failure that went undiagnosed for weeks.

While a complete reciting of mistreatment by the medical staff at the detention center has been discussed at length in documents submitted to this Court, it is worth repeating a handful of highlights. ECF 3, 3-1, 3-2, 3-3; Ex. 1; Ex. 2. It took fifteen days after complaining about chest pains for the Petitioner to receive an Electrocardiogram (ECG) on June 26, 2025, and again on July 2, 2025. The doctor finally reviewed these ECGs on July 8, 2025, sending Petitioner to the hospital.

After Petitioner's ten-day hospital stay, the detention center's medical staff ignored professional orders given by cardiologists from UC Health. The detention center medical staff has not changed his diet; they have not taken him to follow-up appointments with cardiologists; they have not weighed him every morning. Their inaction has led to the only predictable outcome: another trip to the emergency room on October 21, 2025. These past missteps foreshadow irreparable harm that will surely happen should Petitioner remain detained. Petitioner respectfully requests that the Court grants relief to prevent further harm.

B. There is no reason to believe Petitioner will receive care that will prevent irreparable harm.

Respondents argue that the Court should look at the Petitioner's most recent hospitalization and scheduled follow-up appointment on a blank slate. But Petitioner had been complaining about shoulder pain, a common sign of heart issues, for weeks. EFC 3-2 at 4. He had requested follow-up appointments to see cardiologists as ordered by UC Health doctors in July. Only on October 21, 2025, did the doctor at the detention facility administer an ECG and immediately called for an ambulance to take Petitioner to the emergency room. *Id.*

On these facts, the Government cannot be trusted to prevent irreparable future harm, but still Respondents ask the Court to do just that. Respondents have scheduled Petitioner's follow-up appointment after Petitioner's brief is due to the Court. The last one was postponed by six months, until March 2026. ECF 3-2 at 4.

The Respondents state, "it is unknown . . . what steps Respondents will take to implement those recommendations." But again, the past is prologue. Previously, Respondents took no such steps. Any action taken to provide preventative, regularly scheduled care, would be an outlier. Petitioner cannot risk the irreparable harm that will follow from this pattern of escalating emergencies. The Court should so find.

C. Respondents are unable to point to any specific harm they will endure.

Respondents' need to enforce immigration law is not affected whatsoever by releasing Petitioner to conclude his immigration proceedings non-detained, or by providing Petitioner with a bond hearing as required by statute. Simply stating that Respondents are not required to adhere to a particular practice does not show harm. ECF 13 at 25.

Respondents attempt to claim that granting Petitioner relief would enjoin the government from effectuating statutes enacted by representatives of its people. *Id.* Granting relief would cause the government to effectuate the relevant statutes. The government is misapplying them.

D. Petitioner's detention in itself qualifies as irreparable harm due to its illegality and Petitioner's medical condition.

Detention without a bond hearing required by statute certainly amounts to irreparable harm. *Loa Caballero v. Baltazar*, 2025 WL 2977650, FN 7 (citing *Hernandez Marcelo*, No. --- F. Supp. 3d ----, 2025 WL 2741230, at *10 (S.D. Iowa Sept. 10, 2025)). Being in detention without a bond hearing violates the INA and procedural due process rights. *Loa Caballero v. Baltazar*, 2025 WL 2977650, at *8; *Garcia Cortes*, 2025 WL 2652880, at *4 (citing *Lopez*

Benitez v. Francis, No. 25-cv-5937-DEH, 2025 WL 2371588, at *13 (S.D.N.Y. Aug. 13, 2025); *Doe*, 2025 WL 2576819, at *11 ("In sum, the *Mathews* [*v. Eldrige*, 424 U.S. 319 (1976)] factors weigh in favor of Petitioner, and the court finds that his detention without a bond hearing violates his Due Process rights.")). The Court should follow courts across both the district and the country in finding that Petitioner's detention rises to the level of irreparable harm and violates his Due Process rights.

Petitioner's medical condition further exacerbates the irreparable harm caused by being detained. The *Hernandez Marcelo* court found that inadequate medical care by the detention facility, including missed medical appointments, caused irreparable harm sufficient enough to outweigh any interest the government might have in keeping the petitioner in detention. *Hernandez Marcelo*, 2025 WL 2741230, at *10. As in *Hernandez Marcelo*, the Court should find that the gross and continued medical harm suffered by Petitioner is in fact irreparable and outweighs any harm Respondents may suffer from the Court granting relief.

V. This Court should grant Petitioner relief using its equitable powers by either ordering Petitioner's immediate release or a hearing for custody redetermination within seven days where the government bears the burden.

Respondents classify Petitioner's request for relief as against the status quo, when in fact, it is their behavior disrupting well-established government functions and legal principles. ECF 13 at 21-22. Respondents also argue that Petitioner would not win on the merits of his case and that the government should not bear the burden of proof in a custody redetermination. ECF 13 at 20, 22. The inaccuracies in Respondents' argument tied with their attempt to distract the Court prove why these forms of relief are necessary for Petitioner.

This Court is empowered to grant Petitioner's request for immediate release. This Court should follow the ruling from Judge Regina M. Rodriguez in *Mendoza Gutierrez* where the

petitioner's request for immediate release was granted until receiving a bond hearing before an IJ. *Mendoza Gutierrez*, 2025 WL 2962908, *14. Petitioner in this present matter has made a strong case that he needs immediate release to prevent irreparable harm. His claim on the merits is similar to the litany of cases granted by federal courts across the country. Release to wait for a bond hearing is appropriate here so Petitioner can get necessary medical care.

In the alternative to immediate release, Petitioner requests this Court order a bond hearing before an IJ within seven days, The Respondents' arguments row upstream against a growing list of decisions, including many from this very district, finding that petitioners are being illegally held in mandatory detention. This Court at the very least must give Petitioner speedy access to a bond hearing where an IJ can evaluate the necessary factors outlined for release on bond.

Additionally, Respondents arbitrarily bring up Petitioner's criminal history. ECF 13-1 at ¶ 10. Respondents cite to charges against Petitioner that have been dropped or otherwise did not result in a conviction. *Id.* Petitioner's criminal history is not relevant to the case at hand and is not as extensive as Respondents would lead the Court to believe. This impropriety confirms that Petitioner would not have a constitutionally adequate bond hearing without the burden of proof shifted to the government.

Conclusion

The Respondents recycle unpersuasive legal arguments to Petitioner's claims for relief. Those arguments reject well-founded precedent on jurisdiction and fight against the tide of *habeas* relief granted across this country, and more specifically by this very Court, for undocumented noncitizens like Petitioner suddenly subjected to mandatory detention. Furthermore, Respondents fail to address the irreparable harm, outweighing any government

interest, that will almost certainly befall Petitioner if he remains at the mercy of detention medical staff.

Petitioner respectfully requests the Court grant for the Petitioner by ordering his immediate release or a prompt, constitutionally adequate bond hearing where the government bears the burden to justify continued detention.

Dated: October 27, 2025.

Respectfully Submitted,

s/ Elizabeth Jordan

Rachel Ware
Elizabeth Jordan
John A. Hathaway

STUDENT LAW OFFICE
University of Denver Sturm College of Law
2255 East Evans Avenue Suite 335
Denver, CO 80210
Rachel.Ware@du.edu
Elizabeth.Jordan@du.edu
John.A.Hathaway@du.edu

VERIFICATION

I, s/ Elizabeth Jordan, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petitioner's Reply to Respondent's Consolidated Response are true and correct.

Dated: October 27, 2025

CERTIFICATE OF SERVICE

I, Elizabeth Jordan, hereby certify that on October 27, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system.

/s/ Elizabeth Jordan
STUDENT LAW OFFICE – UNIVERSITY OF DENVER STURM COLLEGE OF LAW
Pro Bono Counsel for Petitioner Oscar Artola Arauz