

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martinez**

Civil Action No. 25-cv-4029-WJM-STV

VICTOR GARCIA ABANIL,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden
of the Aurora Contract Detention Facility, *et al.*

Respondents.

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS (ECF NO 1) AND ORDER TO SHOW CAUSE (ECF NO 6)**

Petitioner, VICTOR GARCIA ABANIL, by and through undersigned counsel, respectfully submits this reply in support of his Petition for Writ of Habeas Corpus (ECF No. 1) and the Court's Order to Show Cause (ECF No. 6). On December 30, 2025, Respondents filed their Response to the Court's Order to Show Cause. ECF No. 9.

Respondents' Response attempts to retroactively reclassify Garcia Abanil's detention as mandatory under 8 U.S.C. § 1225(b)(2), notwithstanding Respondents' own initial treatment of him under 8 U.S.C. § 1226(a), the plain text of the statute, and a growing number of decisions from this District rejecting the same argument. As explained below, Garcia Abanil is detained under 8 U.S.C. § 1226(a), not § 1225. He is therefore entitled to an individualized bond hearing, and the continued denial of that hearing violates both the INA and due process. He respectfully requests that the Court order Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a)

within seven (7) days of this Court's order and require the government to carry the burden of proof at that hearing.

ARGUMENTS

I. GARCIA ABANIL IS NOT SUBJECT TO 8 U.S.C. § 1225(b)(2).

Respondents argue Garcia Abanil is an "applicant for admission" because he is a noncitizen who is present in this country but has not been admitted. ECF No. 9 at 10-12 (citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018)). Even accepting this as true, § 1225(b)(2)(A) requires more than simply being an applicant for admission. It also requires the applicant to be "seeking admission" and "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Further, being an applicant for admission does not necessarily equate with "seeking admission." As the Southern District of New York aptly explained, "'seeking' is written in the present-progressive tense, which 'is used to refer to an action or a state that is continuing to happen.' Putting that all together, 'seeking admission' requires a noncitizen to *continue* to want to *go into* the country.'" *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (cleaned up) (emphasis in original) (citing Supreme Court precedent, the Oxford English Dictionary, Black's Law Dictionary, and Merriam Webster Online).

Under this plain language, § 1225(b)(2)(A) cannot apply to Garcia Abanil because "you can't go into a place where you already are," and Garcia Abanil has been here for over fifteen years. *Id.* He was arrested in the interior, placed in removal proceedings, and detained pending those proceedings. At no point was he attempting to enter the United States or presenting himself for inspection. Under the plain meaning of § 1225(b)(2)(A), the statute simply does not apply to him.

Respondents also rely heavily on the Supreme Court's opinion in *Jennings v. Rodriguez* and contend that the Supreme Court's explanation regarding the scope of § 1225 should

guide this Court's analysis. ECF No. 9 at 10-12. Respondents' theory is largely undercut by the fact that the Supreme Court's discussion in *Jennings* regarding §§ 1225 and 1226 considered an entirely different question of law. There, the Court was asked to determine whether noncitizens who were indisputably subject to the mandatory detention provisions of §§ 1225(b)(1), 1225(b)(2), or 1226(c), were entitled to "periodic bond hearings," and whether the detention of noncitizens under §§ 1225(b)(1) and (b)(2) is limited to a six-month period. *Jennings*, 583 U.S. at 286. In concluding those provisions contained no time limits, the Supreme Court "said nothing about whether persons like [Mr. Garcia Abanil] were subject to those provisions in the first place." *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *10 (E.D.N.Y. Oct. 6, 2025).

Respondents next contend that the Supreme Court's characterization in *Jennings* of § 1225(b)(2) as a "catchall" necessarily means that *any* applicant for admission who does not fall within the "Arriving [Noncitizen]" or "Designation" provisions of § 1225(b)(1)—whether they are seeking admission or not—are subject to mandatory detention under § 1225(b)(2). ECF No. 9 at 12. But the Supreme Court was more specific than that. It said that § 1225(b)(2) applies to "[noncitizens] *seeking* admission into the country." *Jennings*, 583 U.S. at 289 (emphasis added). The Supreme Court also notably said § 1226 applies to "[noncitizens] *already in the country* pending the outcome of removal proceedings." *Id.* (emphasis added). This District, along with a myriad of others have addressed this same argument and found Respondents' analysis of *Jennings* to be unpersuasive.

Respondents assert that their interpretation of the statute is more persuasive notwithstanding the "almost universal rejection" of Respondents' new reading of the statute because those decisions are non-precedential, and the question has not been decided by a federal Court of Appeals in any circuit. ECF No. 9 at 15. Respondents instead point to "numerous courts [that] have affirmed

Respondents' interpretation of § 1225, often articulating their reasoning in careful detail." *Id.* (listing 8 out-of-circuit cases).

Respondents however "make no attempt to distinguish the authority rejecting their arguments." *Barreno v. Baltazar*, No. 25-cv-03017-GPG-TPO, 2025 WL 3190936, at *1-4 (D. Colo. Nov. 14, 2025). Instead, they simply rehash the same arguments other judges in this District have already rejected.

Respondents' insistence that their interpretation should prevail despite its near-universal rejection is unavailing. Although district court decisions are not binding, the consistent and reasoned rejection of Respondents' position by courts in this District is highly persuasive—particularly where Respondents offer no principled basis to distinguish those cases. This Court is not writing on a blank slate. Rather, it is presented with an argument that has already been carefully considered and repeatedly rejected by judges confronting materially identical facts. The Court should decline Respondents' invitation to revive an interpretation that this District has already found incompatible with the INA.

In sum, § 1225(b)(2)(A) does not apply to Garcia Abanil as a matter of statutory text, structure, and ordinary meaning. While Respondents attempt to stretch the term "applicant for admission" beyond its function, Congress expressly limited § 1225(b)(2) to noncitizens *seeking admission*—a requirement that presupposes an effort to enter the United States. Garcia Abanil was arrested in the interior after more than fifteen years of residence and was never engaged in an attempt to enter or reenter the country. Accepting Respondents' interpretation would read the phrase "seeking admission" out of the statute entirely and collapse the carefully drawn distinction between §§ 1225 and 1226. Because Garcia Abanil was already in the United States and detained pending removal proceedings, § 1226(a)—not § 1225(b)(2)—governs his detention.

II. THE IJ DECISION IS NOT PRECLUSIVE OF RELIEF AS THE PROPER STATUTORY AUTHORITY GOVERNING GARCIA ABANIL'S DETENTION IS 8 U.S.C. § 1226(a).

Respondents next contend that notwithstanding their initial treatment of Garcia Abanil under 8 U.S.C. § 1226(a), a fact they do not dispute, he “has had reason to know ... that he is detained under § 1225” based on the Immigration Judge’s ruling on September 12, 2025. ECF No. 9 at 14-15. That argument misunderstands both the role of this Court and the limits of agency adjudication.

First, the Immigration Judge’s determination rested on a statutory analysis that is incorrect for the reasons explained above. An IJ’s misinterpretation of the INA cannot insulate unlawful detention from judicial review. District courts retain an independent obligation to determine the meaning of the statute governing detention and “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024).

Here, the BIA’s reasoning in *Matter of Yajure Hurtado*—on which the IJ relied—cannot be squared with *Jennings* nor the plain language of the statute, which clearly places noncitizens already residing in the United States under § 1226, not § 1225. *Jennings*, 583 U.S. at 303. While courts in this District have not yet explicitly rejected *Yajure Hurtado*, their previous determinations that noncitizens already present in the United States are subject to § 1226 necessarily implies a rejection of it. *See Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025); *Arauz v. Baltazar*, No. 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025); *Nava Hernandez v. Baltazar, et al.*, No. 1:25-CV03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025).

Respondents urge the Court to disregard the Notice to Appear, Notice of Custody Determination, and Warrant for Arrest of Alien that all indicate § 1226(a) authority, but “Respondents do not argue that they exercised some available procedural right to change the legal basis of [Garcia Abanil’s] arrest and detention. Nor do Respondents cite authority supporting the idea that they possessed that unilateral right.” *Jose J.O.E. v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025). In short, while the documents are not “dispositive,” they “further support[] the conclusion that” Garcia Abanil “is detained under § 1226.” *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *8 (D. Colo. Oct. 22, 2025).

Accordingly, the Immigration Judge’s decision does not foreclose relief in this Court. The IJ’s ruling rested on an erroneous interpretation of the INA and reliance on agency precedent that cannot be reconciled with the Supreme Court’s guidance in *Jennings* or the requirement of independent judicial judgment reaffirmed in *Loper Bright*. Where, as here, the agency applied the wrong detention statute and declined to exercise jurisdiction over bond altogether, this Court must independently determine the proper statutory authority governing detention. The undisputed record, including Respondents’ own charging and custody documents, confirms that Garcia Abanil is detained under § 1226(a), rendering the IJ’s contrary conclusion legally unsound.

III. GARCIA ABANIL’S RIGHT TO DUE PROCESS UNDER 8 U.S.C. § 1226(a) HAS BEEN VIOLATED AND CONTINUES TO BE VIOLATED.

Respondents contend that Garcia Abanil has been deprived of no statutory right. ECF No. 9 at 15-16. But given that § 1226(a) governs the question of his detention and “that aliens detained under § 1226(a)” should “receive bond hearings at the outset of detention,” *Jennings*, 583 U.S. at 306, it is no stretch to find that the Immigration Judge’s denial of a bond hearing denied him his statutory rights. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(d).

Respondents next posit a lack of prejudice, ECF No. 9 at 16, but this is not a case where Garcia Abanil "contests none of the facts" leading to "the result in the case" of detention, *Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003), nor is it one where there is no "delta between the process [Garcia Abanil] has received and the process he may be due." *Bonilla-Espinoza v. Ceja*, No. 25-cv-01120-GPG, ECF No. 11 (D. Colo. May 21, 2025). To the contrary, "Respondents have not offered any explanation for" Garcia Abanil's "detention other than their initial assertion that it is mandatory." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 495 (S.D.N.Y. 2025). "Such an assertion is precisely the *opposite* of an exercise of discretion," which is the process Garcia Abanil is due. *Id.* Finally, Respondents argue that the length of Garcia Abanil's detention does not give rise to due process concerns, but their argument again hinges upon mandatory detention applying here, and it does not apply here. *See* ECF No. 9 at 16-17.

Because § 1226(a) governs Garcia Abanil's detention, the denial of any bond hearing constitutes an ongoing violation of both the INA and due process. Section 1226(a) contemplates discretionary detention accompanied by an individualized custody determination. Here, no such determination occurred. The Immigration Judge made no factual findings, exercised no discretion, and considered none of the evidence Garcia Abanil submitted in support of release. This is not a harmless procedural defect—it is the deprivation itself. Absent a prompt bond hearing that meaningfully evaluates flight risk and danger, Garcia Abanil's continued detention cannot be squared with the procedural protections Congress required or the Constitution demands.

IV. GARCIA ABANIL DOES NOT SEEK RELIEF PURSUANT TO A NATIONWIDE DECLARATORY RELIEF.

Respondents devote several pages to arguing that this Court should not give preclusive effect to the certified class action pending in the Central District of California challenging detention under 8 U.S.C. § 1225 for long-term residents who entered without inspection. *See* ECF

No. 9 at 17-19 (citing *Bautista v. Noem*, No. 25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025)). That discussion is misplaced.

Garcia Abanil does not seek nationwide declaratory or injunctive relief. He does not invoke, rely upon, or attempt to enforce the Central District of California's class certification order. His Petition for Writ of Habeas Corpus is an individual challenge to the lawfulness of his own detention, grounded in Respondents' specific treatment of him and their erroneous classification of his detention under § 1225(b)(2).

Nothing in the Petition asks this Court to bind Respondents with respect to other detainees, alter agency-wide policy, or adjudicate the legality of § 1225 detention in the abstract. The relief sought is limited and case-specific: a determination of the statute governing Garcia Abanil's detention and an order requiring Respondents to provide the bond process Congress prescribed under § 1226(a).

RELIEF REQUESTED

Because Garcia Abanil is detained pursuant to 8 U.S.C. § 1226(a), he is entitled to an individualized bond hearing at which an Immigration Judge meaningfully assesses whether his continued detention is justified. The Court should therefore order Respondents to provide Garcia Abanil a bond hearing under § 1226(a) within seven (7) days of the Court's order.

In addition, due process requires that the government bear the burden of proof at that hearing. Although § 1226(a) and its implementing regulations do not expressly allocate the burden of proof, they likewise do not foreclose burden shifting where constitutional concerns are present. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1003.19(d). The Supreme Court has not resolved the issue, the Tenth Circuit has yet to decide this issue, and the courts of appeals are divided. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 27-41 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851, 855-57 (2d Cir. 2020); *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir.

2018); *Miranda v. Garland*, 34 F.4th 338, 365-66 (4th Cir. 2022); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1193-94, 1203-14 (9th Cir. 2022). In the absence of controlling authority, district courts must determine what process is constitutionally required under the circumstances presented.

Courts have applied two tests in determining whether shifting the burden to the government is warranted. See *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729, *6 (D.N.M. Sept. 17, 2025). The first test, exemplified by *L.G. v. Choate*, applies the framework from *Mathews v. Eldridge*, balancing (1) the private interest affected by the official action, (2) the risk of erroneous deprivation of such interest through the procedures used and the probable value of additional or different procedural safeguards, and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *L.G. v. Choate*, 744 F. Supp. 3d 1172 (D. Colo. 2024) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). The second test, exemplified by *Diaz-Ceja v. McAleenan*, follows the framework established for discerning what process is due for involuntary civil detainees awaiting trial or mental health treatment. See *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211 (D. Colo. 2019) (citing *Addington v. Texas*, 441 U.S. 418, 425 (1979)).

On the first *Mathews* factor, Garcia Abanil's detention without due process has separated him from his family, including his U.S. citizen son with Autism for whom he is the sole provider. Garcia Abanil's private interest in being free from detention—and unlawful detention at that—is at stake now. This factor cuts in Garcia Abanil's favor.

Second, shifting the burden to the Government at a subsequent bond hearing likely will reduce the risk of the continuing erroneous deprivation of Garcia Abanil's liberty interests. In preparation for his initial bond hearing before an IJ, Garcia Abanil submitted extensive evidence supporting his release on bond, including that his common-law U.S. citizen wife is suffering from

kidney and heart failure and his U.S. citizen son suffers from Autism and he is the sole financial provider for both. These materials represent an attempt by Garcia Abanil, in the first instance, to meet his burden of proving that he poses no danger to persons or property, presents no threat to national security, and is not a flight risk.

Garcia Abanil's documentary evidence was clearly not considered by the IJ, who made no factual findings and determined she lacked jurisdiction to conduct an individualized custody determination altogether. Had Garcia Abanil received the initial custody determination to which he was entitled under § 1226(a), the Government would have had the opportunity to cross-examine or rebut Garcia Abanil's claims that he is not a flight risk or a danger to the community or to argue before the IJ that he failed to meet his burden to prove as much. Nearly three months after submitting them, Garcia Abanil remains detained without meaningful consideration of his evidence. This raises serious concerns about Garcia Abanil's access to a meaningful bond hearing. Requiring the Government to prove by clear and convincing evidence that Garcia Abanil is a flight risk and/or a danger to the community ameliorates those concerns.

Finally, the Government's interest in detaining Garcia Abanil only outweighs his liberty interests if he is a flight risk or a danger to his community. The Government's interest in ensuring appearance at hearings and protecting the community is certainly weighty. *See Choate*, 744 F.Supp.3d at 1185 (citing *Zadvydas*, 533 U.S. at 690). But this interest dissolves if a noncitizen is neither a flight risk nor dangerous. Shifting the burden to the Government to justify detention may actually promote the Government's separate interest in managing overcrowding at DHS detention facilities. *See Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020). Here, where Garcia Abanil has submitted extensive documentary evidence attempting to show that he is neither a flight

risk nor dangerous, the Government has no interest in detaining Garcia Abanil absent a showing by them that he is, in fact, at risk of flight or a danger to the community.

Nor would shifting the burden of proof impose an unreasonable administrative or fiscal burden on the Government. The Government has vast resources at its disposal to gather information about Garcia Abanil's eligibility for bond. In addition, DHS was provided Garcia Abanil's bond packet on September 5, 2025. The Government had over two months between his arrest on July 2, 2025, and his initial bond hearing on September 12, 2025, to gather information. They were provided a comprehensive packet of materials about Garcia Abanil in advance of his September 12 bond hearing. The Government has had sufficient opportunity to gather new information and analyze the information provided to them to bear the burden of justifying Garcia Abanil's detention.

The Court in *Diaz-Ceja v. McAleenan* declined to apply the *Mathews* analysis to these types of cases, finding instead that the standard applied to involuntary civil detention pending trial or mental health treatment is more appropriate to pre-removal detention proceedings in the immigration context. No. 19-cv-00824-NYW, 2019 WL 2774211, at *9 (D. Colo. 2019). This framework simply considers the "government's and the individual's respective interests, and then consider[s] whether the existing process adequately balanced and protected the two." *Id.* In *Diaz-Ceja*, the Court found the Government's interest in ensuring appearance and protecting the community to be valid and compelling while also recognizing that "freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Id.* (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

The analytical framework applied in *Diaz-Ceja* also cuts in favor of shifting the burden in this case. The Government's interest in continuing to detain Garcia Abanil is minimal unless they

can show that he is at risk of flight and/or a danger to the community. Garcia Abanil's interest in liberty, on the other hand, is particularly strong after nearly six months of detention, separated from his family and community, without the opportunity for a meaningful bond hearing. Given the Government's conduct thus far and the information that Garcia Abanil has already provided to demonstrate his eligibility for bond, requiring Garcia Abanil to bear the burden of proof at a future bond hearing does not "adequately balance[] and protect[]" Garcia Abanil's interests against the Government's. *Diaz-Ceja*, 2019 WL 2774211, at *9. Shifting the burden to the Government is thus appropriate under this framework to ensure the protection of Garcia Abanil's liberty interests.

The Supreme Court has stressed that "due process is flexible" and "calls for such procedural protections as the particular situation demands." *Jennings*, 583 U.S. at 314 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). It demands a fact-specific analysis that may not result in much consensus across cases or courts or lend itself to widely generalizable rules. Applying either the *Mathews* or involuntary civil detention framework to the facts of this case supports shifting the burden to the Government in this § 1226(a) bond hearing. This Court should therefore find that the burden of proof at Garcia Abanil's bond hearing should rest with the Government.

CONCLUSION

Respondents' attempt to recast Garcia Abanil as a mandatory detention § 1225(b)(2) detainee is irreconcilable with the INA's text, structure, and purpose, as well as the weight of federal case law—including decisions from this Court—rejecting the same theory. Section 1225(b)(2)(A) applies only to noncitizens who are *presently seeking admission* at the border or a port of entry and whom an examining immigration officer has determined are not clearly and beyond a doubt entitled to admission. It does not reach long-term residents who have lived in the

interior of the United States for decades and who are now defending themselves in removal proceedings.

By contrast, § 1226(a) is expressly designed to govern the detention of noncitizens “already in the country” who are detained “pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at 289. That is precisely Garcia Abanil’s situation. The statute’s plain terms, the Supreme Court’s interpretation, and Respondents’ own detention paperwork—including the Notice to Appear, Notice of Custody Determination, and arrest warrant issued under § 1226(a)—all confirm that he is detained under § 1226(a), not § 1225.

Because Garcia Abanil is detained under § 1226(a), he is entitled to a prompt bond hearing. Given the length of his detention, the absence of any prior meaningful custody determination, and the substantial liberty interests at stake, due process further requires that the Government bear the burden of justifying continued detention. For these reasons, Garcia Abanil respectfully requests that the Court order Respondents to provide an individualized bond hearing under 8 U.S.C. § 1226(a) within seven (7) days of the Court’s order, at which the Government must establish by clear and convincing evidence that detention is warranted.

Dated this 6th day of January 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2026, I electronically filed the foregoing **Petitioner's Reply in Support Petition for Writ of Habeas Corpus (ECF No. 1) and Order to Show Cause (ECF No. 6)** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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