UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

BERNARDO BACHOS ABARCA, Petitioner, v. JUAN BALTAZAR, *in his official capacity* as Warden of the Aurora ICE Processing Center; ROBERT HAGAN, *in his official capacity* as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and PAMELA JO BONDI, in her official capacity as Attorney General of the United States; Respondents.	Case No. 25-cv-04086-CYC PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO ODER TO SHOW CAUSE (ECF No. 10)

Petitioner, by and through undersigned counsel, submits this Petitioner's Reply to Respondent's Response to Order to Show Cause. It is Petitioner's position that the Respondents are misinterpreting the Court's statements in *Jennings v. Rodriguez, 583 U.S. 281 (2018)* and improperly cite *Jennings* with their "term of art" argument regarding the Court's statements on applicants for admission. Further, Petitioner is a class member of the "Bond Eligible Class" as

certified by final judgment in the U.S. District Court Central District of California and his continued detention without the opportunity for a Bond Hearing is in violation of the Immigration and Nationality Act ("INA") and a violation of Petitioner's Due Process rights.

ARGUMENT

I. The Government's Continued Detention of Petitioner under Section 1225(b)(2)(A) without an Opportunity for Bond is in Violation of the INA.

The Government argues that Petitioner is an "applicant for admission" under Section 1225(b)(2)(A) of the INA and therefore his detention without bond is valid. The Government misinterprets and improperly relies on the Supreme Court's decision in *Jennings v. Rodriguez* to support their conclusion that individuals like Petitioner, who entered without inspection and were then apprehended in the interior of the country, are subject to detention without bond throughout their immigration proceedings. The Government's arguments, as explained below, are contrary to the intent of decades of legislative history and statutory framework. The continued detention of Petitioner without – at the least – an opportunity for bond is in violation of the INA.

A. The Government's argument is flawed in that The Supreme Court's decision in *Jennings v. Rodriguez* does not support the overbroad conclusion that Section 1225(b)(2)(A) applies to all noncitizens who entered without inspection and are unlawfully present.

First, the Government argues that the plain language of the statute supports the conclusion that Section 1225 applies to Petitioner and in its reliance the Government cites the Supreme Court's decision in *Jennings*. In *Jennings*, the Court had, in large part, three main holdings, none of which provide support for the argument that the Government implies from Jennings. First, (1) the Court held that Section 1225(b)(1) and (b)(2) mandate detention of certain noncitizens throughout the completion of applicable proceedings; Petitioner does not contend that holding. Second, the Court held that Section 1226(c) mandated detention of certain

noncitizens that fall within that statute's scope; Petitioner does not contend that holding. Lastly, the Court reversed a lower-court's ruling that noncitizens had a "statutory right to periodic bond hearings" under the constitutional interpretation of Sections 1225(b)(1), (b)(2), and 1226(c) as a whole; again, Petitioner does not contend that holding regarding periodic bond hearings. Therefore, *Jennings* does not support the Government's argument that Section 1225(b)(2)(A) broadly applies to noncitizens who entered without inspection and are unlawfully present. This Court should find that the Petitioner is very clearly not an applicant for admission as the Government contends.

1. The Statutory Definition of "applicants for admission" in Section 1225 covers only certain other noncitizens, not Petitioner.

The plain language of the statute and its subsections show that there are *certain other* individuals who entered without inspection or admission that are considered "applicants for admission" under Section 1225; Petitioner is not one of those individuals. The government argues that Section 1225(b)(2)(A) applies to all noncitizens (who entered without inspection or admission) who are apprehended in the interior, even years after they have entered. This interpretation is unsupported by the statutory text. The Government, relying on *Jennings,* contends that all these individuals are considered "applicants for admission" regardless of any other circumstance. A proper reading of *Jennings* shows that the Court never made such a holding. The plain language of Section 1225(b) and its subsection show that the government misunderstands 1225(b)(1).

To have a better understanding, one could look at the title of the statute: "Inspection of Aliens Arriving in the United States AND *Certain Other Aliens Who Have Not Been Admitted or Paroled.*" (emphases added). The title of the statute itself implies admittedly that it can apply to individuals who have not been admitted or paroled, such as Petitioner. However, the title itself

makes clear that this statute only applies to certain other individuals who have not been admitted or paroled, Congress defined who those "certain other aliens" are in the subclauses of the statute.

Section 1225(b)(1)(A)(iii) outlines the "application to certain other aliens" and states that the Attorney General *may* apply clauses (i) and (ii) to "any or all aliens" described in subclause (II). Subclause (II) covers the "Aliens described", which are the *certain other aliens* mentioned in the title of Section 1225. Subclause (II), upon further reading, clearly describes which individuals fall under this "description" of *certain other aliens who have not been admitted or paroled.* Congress carved out a specific subset group of individuals who are not subject to 1225(b)(1), specifically those who "are not described in subparagraph (F), (2) who have not been admitted or paroled into the United States, (3) and who have not affirmatively shown that they have been physically present in the United States continuously for the 2-year period prior to the date of the determination of inadmissibility." This statutory carveout demonstrates that Congress did not intend Section 1225 to sweep in all noncitizens who entered without inspection. Instead, it identifies a narrow subset who meet each of the three criteria above.

Although Petitioner was not admitted or paroled, he can affirmatively show that he was physically present in the U.S. for the 2-year period prior to the determination of his inadmissibility, meaning that he does not fall under the *certain other aliens* as described in Section 1225 as an applicant for admission.

2. The Government's dismissal of Petitioner's non-precedential decisions and subsequent reliance on non-precedential decisions highlights the need to resolve this legal question – and the U.S. District Court for the District of Colorado has consistently agreed with Petitioner's argument.

The Government states that "each of the decisions [that Petitioner] cites is non-precedential, and the question has not been decided by a federal Court of Appeals in any circuit."

ECF. No. 10, page 11. However, after dismissing Petitioner's arguments for being non-precedential, the Government then relies on numerous non-precedential decisions (from district courts in Texas, New York, Louisiana, Nebraska, etc.) to support their interpretation of Section 1225. However, perhaps the best guide for this Court are the decisions from the District of Colorado itself, particularly the Chief Judge's opinion in regard to this issue: on December 18, 2025, Chief Judge Brimmer issued a decision in the United States District Court for the District of Colorado in which the Court held "Respondents' argument that § 1225(b)(2)(A) applies to noncitizens already residing in the United States is contrary to the plain language of § 1225" and "[t]herefore, noncitizens who 'have been here for years upon years and never proceeded to obtain any form of citizenship . . . are not 'seeking' admission' as defined in § 1225(b)(2)(A)" and that "the scope of Section 1225 does not cover noncitizens" like Petitioner, who "is being detained under 8 U.S.C. 1226(a)" and whose continued detention without the opportunity of a bond hearing violates Section 1226(a). *Florez Marin v. Baltazar,* Case No. 25-cv-03697-PAB, Doc. No. 11 (D. Colo. Dec. 18, 2025). The District of Colorado has consistently ruled in favor of bond hearings pursuant to Section 1226(a) post-*Hurtado*. *See, e.g.*, *Garcia Cortes v. Noem,* Case No. 25-cv-02677-CNS, Doc. No. 9 (D. Colo. Sept. 25, 2025); *Loa Caballero v. Baltazar*, Case No. 25-cv-03120-NYW, Doc. No. 19 (D. Colo. Nov. 5, 2025); *Hernandez v. Balatazar*, Case No. 25-cv-03094-CNS, Doc. No. 27 (D. Colo. Nov. 3, (2025). Therefore, this Court should find that the Government's attempted dismissal of Petitioner's arguments due to citation of non-precedential decisions is non-persuasive because this Court's prior decisions on the same issue have consistently ruled in favor of Petitioner's argument that he is subject to Section 1226 and therefore eligible for the opportunity of a bond hearing.

3. Respondents' Interpretation of Section 1225 would in fact render Section 1226 superfluous and the District of Colorado has agreed that Congress' legislative history does not support the conclusion that Petitioner's Detention is controlled by Section 1225.

In the December 18, 2025 decision from the District of Colorado, the Court held that "Congress's amendment of § 1226 supports petitioner's argument that § 1226 applies to him rather than § 1225(b)(2)(A)" because "Section 1226(c)(1)(E), as respondents concede, 'mandates detention for a narrow category of noncitizens who entered the country without inspection: those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes," and that "[t]his provision would be meaningless if noncitizens already residing in the United States were all subject to mandatory detention under § 1225(b)(2)." *Florez Marin v. Baltazar,* Case No. 25-cv-03697-PAB, Doc. No. 11 (D. Colo. Dec. 18, 2025). Therefore, The District of Colorado held, the continued detention of a noncitizen situated in a position as described by those in the Bond Eligible Class of *Maldonado Bautista* is a detention in violation of Section 1226(a) because the Government's interpretation of the respective Sections would render certain section of 1226 meaningless. This Court should find that same conclusion in this case.

4. The Court in *Jennings* states that Section 1226 very clearly applies to individuals already present in the United States and the plain language does not exclude those who entered without inspection or admission despite the Government's "term of art" argument.

The Court in *Jennings* stated that the language of Sections 1225(b)(1) and (2) is quite clear that "they unequivocally mandate that aliens falling within their scope 'shall' be detained." 583 U.S. at 300-303. As discussed above, that group of people is clearly defined throughout the subsections and subclauses. Petitioner is not included in that description.

The Court said that although Sections 1225(b)(1) and (2) are "quite clear it still held that the plain language of Section 1226(c) is "even clearer." *Id.* "As noted," the Court stated, "Section 1226 applies to aliens *already present in the United States*." (emphasis added). *Id* at 303. A proper reading of that would imply that noncitizens who entered without inspection or admission but are already "present" in the United States are governed by Section 1226 and eligible for bond. That interpretation is quite clear and to suggest otherwise contradicts the Court's ruling.

5. Because Petitioner Is Not an Applicant for Admission Under Section 1225, Congress Intended that the Petitioner Receive a Bond Hearing Under Section 1226

As explained in the sections above, there are certain individuals who have entered without inspection or admission and are still classified as "applicants for admission" under Section 1225; Petitioner is not one of those individuals. The plain language and statutory construction of the statutes lay out a very clear definition and description of which individuals are applicants for admission under that statute and Petitioner very clearly does not fall within that category. Therefore, he is not an applicant for admission and is eligible for relief under Section 1226, if he meets all other requirements.

Congress created Section 1226, authorizing release on bond, for all noncitizens alike so long as they meet the requirements. There is no distinction between those who are inadmissible or deportable under the Act. In fact, the only distinction between Sections 1182 and 1227 mentioned in Section 1226 is that certain inadmissibility offenses make you subject to mandatory detention and certain deportability offenses make you subject to mandatory detention. If Congress had intended for Section 1226 not to apply to noncitizens who entered without inspection, it would have said so expressly. Congress has long demonstrated its ability to

distinguish between noncitizens who entered without inspection and are therefore subject to grounds of inadmissibility, and those who entered with inspection and are subject to deportability. Congress expressly relied on this distinction when identifying which inadmissibility and deportability offenses trigger mandatory detention. Had Congress intended to exclude individuals who entered without inspection from Section 1226, it would not have created or depended upon this clear statutory distinction. For the reasons above, Petitioner does not argue that all noncitizens have a right to bond hearing, but that he is not an applicant for admission and is therefore eligible for a bond hearing as a form of relief.

II. Petitioner's inclusion in the Bond Eligible Class under *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) and the Legislative History of Section 1226 further supports Petitioner's argument, that Section 1226 does apply to Petitioner, that he is entitled to a bond hearing, that he has shown he has a due process right to that hearing, and would suffer prejudice if that hearing is denied.

1. Petitioner is a class member under Maldonado Bautista v. Santacruz and therefore should be granted a bond hearing.

On December 18, 2025, the U.S. District Court Central District of California entered a final judgment certifying a class-action and that class' rights from a certification filed by the named-Petitioner who represents a class known as the "Bond Eligible Class" which this Petitioner is a class-member of. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

The U.S. District Court for the Central District of California held:

> The Bond Eligible Class is CERTIFIED as to Petitioners' claims that the DHS Policy violates the INA and Due Process. The class certified is defined as follows: Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. U.S. District Court Central District of California *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al.* (November 25, 2025)

Based on those parameters, Petitioner is clearly a class-member represented in this Bond Eligible Class that seems to be eligible for bond even though they entered without inspection or admission, which undercuts the entirety of the government's argument.

2. The legislative history surrounding Section 1226 supports the finding that Petitioner is not an applicant for admission.

Further, the legislative history surrounding Section 1226(c) supports the argument that Congress could have explicitly written that noncitizens who entered without inspection or admission are not eligible for bond. Even in the most recent amendment with the Laken Riley Act in January 2025, the only amendments that Congress made were to add more grounds of inadmissibility that would subject someone to mandatory detention, namely that an alien is inadmissible on certain grounds *and* has been arrested for, charged with, convicted of, or has committed certain enumerated crimes. 8 U.S.C. §1226(c)(1)(E). The refusal to simply state "all inadmissible offenses" leads to mandatory detention is quite loud. This Court should find that the statutory interpretation, the constitutional construction, the District Court's class-action, and the legislative history surrounding Section 1226 all support the argument that Petitioner is not an applicant for admission, and he is entitled to a bond hearing.

3. Petitioner has a due process right to a bond hearing.

The government argues that Petitioner has not shown that he has a due process right to a bond hearing; this argument is misplaced because the statutes enacted by Congress clearly show that Petitioner has a statutory right to a bond hearing. The relevant statute, Section 1226, authorizes the arrest, detention, and release on bond or conditional parole; the right to have a bond hearing is available to those not subject to mandatory detention under Section 1226(c) and Petitioner does not fall under one of the grounds for mandatory detention. Therefore, he has a due process right to a bond hearing.

4. **Petitioner has shown prejudice by not being granted a bond hearing.**

The government argues that Petitioner has not shown prejudice and cites *Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 for the proposition that "where a noncitizen failed to show 'that additional procedural safeguards would have changed' the immigration court's decision, this 'failure to prove prejudice leads us to reject [his] due process claim.'" This argument is misplaced because Duran was an individual with a very different factual background than Petitioner; Duran was an individual facing reinstatement of a removal order and the facts in question were whether Duran was subject to a prior order of removal, whether he was the same person previously removed, and whether he had reentered the United States illegally. 348 F.3d at 1160, 1162-63. Because Duran contested none of those facts, the Court held that "he cannot prove that additional safeguards would have the result in this case." *Id.* Petitioner's case is clearly distinguishable from Duran.

In this case, the prejudice suffered by Petitioner is clear: he was detained despite having committed no crimes or offenses that would make him subject to mandatory detention; he was detained despite his numerous family ties in the United States, including his U.S. citizen children. Petitioner's detention and denial of a bond hearing have caused him prejudice and continue to cause him prejudice.

The government argues that the continued detention of Petitioner has been "presumptively constitutional" because the detention has been approximately two months and cites *Demore v. Kim*, 538 U.S. 510, 512 (2003) in support of its argument. The reliance on *Demore* is misplaced because the individuals in that case were convicted of certain crimes that allowed for their detention throughout the removal proceedings. 538 U.S. at 513. In this case, Petitioner does not have a criminal history that would subject him to mandatory detention under

Section 1226(c) throughout his proceedings. The government argues that his detention is and will be short, but the record does not support that claim. The facts instead show an uncertain future and uncertain amount of time in detention for Petitioner. As of today, he does not have a bond hearing, his removal proceedings only began with the issuance of his Notice to Appear on November 25, 2025, and he has only begun preparing his case against removal. Petitioner has no idea when will be released and allowed to see his family. Petitioner was living in the United States as a hard worker, as a family man and member of his community before he was unceremoniously arrested and detained by ICE without notice. The approximate two months that he has been in detention without the opportunity for bond are two months too long and he will prove at an eventual Bond Hearing that he is not a danger to the community nor a flight risk and deserves to be out on bond while he fights for his case against deportation.

Therefore, the Government's argument that Petitioner has already been afforded due process is misplaced because the statutes enacted by Congress clearly show that Petitioner has a statutory right to a bond hearing, the prior decisions are in favor with Petitioner's argument, and the legislative history continues to support Petitioner's argument. The relevant statute, Section 1226, authorizes the arrest, detention, and release on bond or conditional parole; the right to have a bond hearing is available to those not subject to mandatory detention under Section 1226(c) and Petitioner does not fall under one of the grounds for mandatory detention. Therefore, he has a due process right to a bond hearing.

Finally, for all the reasons above, this Court should reject the Government's premature argument that Petitioner's removal proceedings will have a "definite termination point" at the end of removal proceedings. His removal proceedings have in fact only just begun. The Government's position that this case is moving toward a definite termination point is mere

speculation. The Petitioner has shown that he is entitled to a bond hearing while he awaits the conclusion of his removal proceedings.

III. Petitioner's Petition for Writ of Habeas Corpus should be granted even if this Court does not apply *Maldonado Bautista v. Santacruz*.

The government argues that this Court should not grant preclusive effect to the decisions of the District Court for the Central District of California in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), on the grounds that an appeal in that case is pending, that the *Maldonado* court lacked jurisdiction to grant a judgment that applied to class members outside it district, and that "collateral estoppel is disfavored when applied against the federal government." ECF No. 10, pg. 17-19.

As Petitioner stated in his original petition, Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). They are also bound by the final judgment issued on December 18, 2025. However, even if this Court does not accord any weight to the *Maldonado* decision, the District of Colorado has consistently found that persons in a similar situation as Petitioner "'are not 'seeking' admission' as defined in § 1225(b)(2)(A),'" are detained instead under 8 U.S.C. § 1226(a), and their continued detention without the opportunity of a bond hearing violates Section 1226(a). *Florez Marin v. Baltazar,* Case No. 25-cv-03697-PAB, Doc. No. 11 (D. Colo. Dec. 18, 2025). *See also Garcia Cortes v. Noem,* Case No. 25-cv-02677-CNS, Doc. No. 9 (D. Colo. Sept. 25, 2025); *Loa Caballero v. Baltazar*, Case No. 25-cv-03120-NYW, Doc. No. 19 (D. Colo. Nov. 5, 2025); *Hernandez v. Balatazar*, Case No. 25-cv-03094-CNS, Doc. No. 27 (D. Colo. Nov. 3, (2025). Even before the *Maldonado* decision, it was well established in the District of Colorado that a detained person similar to Petitioner has a right to a bond hearing.

Therefore, this Court should grant Petitioner's requested relief even if it does not apply *Maldonado*.

CONCLUSION

For the reasons discussed above, the Petitioner prays that this Court will grant his original Prayer of Relief.

Date: February 2, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on February 2, 2026, 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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/s/ Scott Brian Petiya

SCOTT BRIAN PETIYA