IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Philip A. Brimmer

Civil Action No. 1:26-cv-00297-PAB

ADRIAN VELASQUEZ GONZALEZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as Secretary of U.S. Department of Homeland Security; and
PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents.

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (ECF NO 1) AND ORDER TO SHOW CAUSE (ECF NO 4)

Petitioner, ADRIAN VELASQUEZ GONZALEZ, 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. 4). On February 9, 2026, Respondents filed their Response to the Court's Order to Show Cause. ECF No. 8. On February 10, 2026, Respondents filed an errata attaching the Exhibit A referenced in their response but not attached with the response. ECF No. 9.

Respondents' filing does not dispute any material facts. Instead, Respondents expressly characterize their response as "abbreviated," concede that the legal issue presented here is not materially different from issues already decided by this Court and acknowledge that adherence to

this Court's prior rulings would lead to the same result. ECF No. 8 at 1-2. Respondents nevertheless urge the Court to reconsider an interpretation of the detention statutes that this Court has already rejected, offering no new facts or controlling authority and expressly filing their response only to preserve appellate arguments.

Respondents' position fails. Velasquez Gonzalez is detained under 8 U.S.C. § 1226(a), not § 1225(b)(2), and is therefore entitled to an individualized bond hearing. The continued denial of that hearing violates the INA and due process. Velasquez Gonzalez 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 the Court's order and require the Government to bear the burden of justifying continued detention by clear and convincing evidence as to danger to community and flight risk.

ARGUMENTS

I. RESPONDENTS' RESPONSE CONFIRMS THAT THIS CASE IS CONTROLLED BY THIS COURT'S PRIOR RULINGS.

Respondents expressly acknowledge that the legal issue presented—whether a long-term interior noncitizen is detained under 8 U.S.C. § 1225(b)(2) or § 1226(a)—is not materially different from cases this Court has already decided. ECF 8 at 1-2 (citing *Alfaro Orellana v. Noem, et al.*, No. 25-cv-03976-PAB (D. Colo. Dec. 22, 2025)). They further acknowledge that if the Court adheres to its prior rulings, the same result must follow here.

Nothing in Respondents' filing provides a basis for a different outcome. Respondents do not identify any new statutory text, binding precedent, or factual distinction that would justify departing from this Court's settled analysis. Preservation for appeal is not a legal argument, and it is not a reason to deny relief in an individual habeas case.

II. VELASQUEZ GONZALEZ IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2).

Respondents again argue that because Velasquez Gonzalez is "present in the United States" and "has not been admitted," he is an "applicant for admission" subject to mandatory detention under § 1225(b)(2). That argument improperly collapses the statute.

Section 1225(b)(2)(A) applies only where an immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted. The statutory phrase "seeking admission" is not surplusage. It presupposes an effort to enter the United States. A noncitizen who has lived in the interior of the country for years, was arrested inside the United States, and was never attempting to enter or present for inspection is not "seeking admission" within the ordinary meaning of that term.

Accepting Respondents' interpretation would read "seeking admission" out of the statute entirely and would erase the distinction Congress drew between § 1225 (inspection and admission) and § 1226 (arrest and detention pending removal). This Court and numerous others have already rejected that construction, and Respondents offer no principled reason to revive it here.

Neither *Jennings v. Rodriguez*, 583 U.S. 281 (2018), nor *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), compels a different result. *Jennings* addressed whether prolonged detention statutes could be re-written to include periodic bond hearings; it did not decide the threshold question of which detention statute applies to long-term interior noncitizens. *Jennings*, 583 U.S. at 287. And a recent BIA decision cannot override the plain text of the INA or binding federal court precedent—particularly where Respondents concede that this Court has already ruled otherwise.

III. VELASQUEZ GONZALEZ IS DETAINED UNDER § 1226(a) AND IS ENTITLED TO A BOND HEARING AT WHICH THE GOVERNMENT BEARS THE BURDEN OF PROOF.

Because § 1225(b)(2) does not apply, Velasquez Gonzalez's detention is governed by § 1226(a). That statute authorizes detention pending removal proceedings but expressly contemplates release on bond after an individualized custody determination. Velasquez Gonzalez has never received a bond hearing under § 1226(a).

Velasquez Gonzalez's continued detention without an individualized bond hearing necessarily violates his Fifth Amendment right to due process. *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025) (concluding, at least as it pertains to the first factor set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), that "the facts clearly demonstrate[d] that [petitioner] was 'entitled to more process than he received' pursuant to § 1226(a) and its implementing regulations" and thus "a violation of [petitioner's] 'liberty interest is clearly established' here").

Section 1226(a) and its implementing regulations are silent as to whether the applicant or the Government carries the burden of proof at a bond hearing. 8 U.S.C. § 1226(a); 8 C.F.R. § 1003.19(d). Moreover, the Tenth Circuit has not spoken on the issue, and other Circuit Courts of Appeal remain divided. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1203-05 (9th Cir. 2022) (discussing Circuit split). Other courts within this District have found that shifting the burden to the Government to justify a noncitizen's continued detention is appropriate. *See Arauz v. Baltazar*, 2025 WL 3041840, at *4 n.3 (D. Colo. Oct. 31, 2025); *Espinoza Ruiz v. Baltazar*, 2025 WL 3294762, at *2 (D. Colo. Nov. 26, 2025) (ordering that the Government would carry the burden for bond hearing under § 1226(a)); *Lao Caballero v. Baltazar*, 2025 WL 2977650, at *9 (D. Colo. Oct. 22, 2025) ("During such § 1226(a) hearing, the Respondents bear the burden of justifying detention"); *Mendoza Gutierrez v. Baltazar*, 2025 WL 2962908, at *14 ("the Government shall

bear the burden of justifying [detention] by clear and convincing evidence of dangerousness and of risk of flight"); *Garcia Cortes v. Noem*, 2025 WL 2652880, at *5 (D. Colo. Sept. 16, 2025) (same).[1]

Indeed, as the Court observed in *Arostegui-Maldonado*, the Supreme Court has long held that the clear and convincing evidence standard applies to civil detention where an individual's liberty interest is at stake. *See, e.g., United States v. Salerno,* 481 U.S. 739, 751 (1987) (noting that pretrial detention is permitted "[w]hen the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community"). *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 944 (D. Colo. 2025). This rationale applies with equal force in this case, where Velasquez Gonzalez's liberty interest hangs in the balance.

In sum, the Court should order Respondents to provide Velasquez Gonzalez with a bond hearing under § 1226(a) within seven days of the Court's order, and order that the Government shall bear the burden of justifying Velasquez Gonzalez's continued detention by clear and convincing evidence of his dangerousness to the safety of the community, or of his risk of flight.

CONCLUSION

Respondents' attempt to reclassify Velasquez Gonzalez as subject to mandatory detention under § 1225(b)(2) 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 to noncitizens who are presently seeking admission at the border or a port of entry. It does not apply to long-term interior residents detained pending removal proceedings, like Velasquez Gonzalez.

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[1] As Respondents did not meaningfully challenge which party would bear the burden of proof in their response, any such argument has therefore been forfeited. *See C1.G ex tel. C.G. v. Siegfried*, 38 F.4th 1270, 1282 (10th Cir. 2022) (holding that the district court properly dismissed an argument as "abandoned" where the party failed to include an argument in response to arguments raised in a motion to dismiss).

Because Velasquez Gonzalez is detained under § 1226(a), he is entitled to an individualized 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 his continued detention by clear and convincing evidence at a bond hearing.

For these reasons, Velasquez Gonzalez respectfully requests that the Court (1) grant his Petition for Writ of Habeas Corpus; and (2) 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 his continued detention is justified.

Dated this 13th day of February 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 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. 4)** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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