

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

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<b>ALEX ARMANDO MARTINEZ-</b>	)	
<b>ORELLANA,</b>	)	
<i>Petitioner,</i>	)	<b>1:26-cv-355</b>
	)	
<b>v.</b>	)	<b>REPLY TO RESPONDENTS' RESPONSE</b>
	)	<b>TO COURT'S ORDER TO SHOW CAUSE</b>
<b>ROBERT HAGAN, et al.,</b>	)	
	)	
<i>Respondents.</i>	)	
_____	)	

On January 29, 2026, Petitioner Alex Armando Martinez-Orellana (“Mr. Martinez-Orellana”) filed a petition for a writ of habeas corpus on the basis that his immigration detention violates the Immigration and Nationality Act as well as his substantive and procedural due process rights and the Administrative Procedure Act. *See* ECF No. 1. As Mr. Martinez-Orellana has noted in his pleadings, the case involves an issue that over one hundred judges have issued over one thousand decisions on in the last several months. But the case also presents an issue that has not yet been addressed in those cases, and one that requires immediate release rather than a new bond hearing in this case.

As outlined in the habeas petition, Respondents have refused to abide by the required process required to detain Mr. Martinez-Orellana under any statute of detention. Respondents (rightly) do not argue that Mr. Martinez-Orellana is amenable to expedited removal under 8 U.S.C. § 1225(b)(1). *See* Response, ECF No. 10 at 2. Indeed, ICE placed him in removal proceedings under 8 U.S.C. § 1229a through the service of a Notice to Appear. *See* NTA, ECF No. 1-6. In order to keep Mr. Martinez-Orellana in custody during those proceedings, ICE was required to make an

initial custody determination. 8 C.F.R. § 236.1(c)(8), (g)(1); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021) (Noting that ICE officers make the initial custody determination); *Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (noting that 8 C.F.R. § 236.1(c)(8) “applies only to the initial custody determination made by the arresting officer and not to immigration judges in bond hearings” although immigration judges do apply the same rule regarding presumption of detention to custody hearings under § 1226(a)). Under the regulations, once ICE makes an initial determination to continue to detain the noncitizen, the noncitizen may seek a custody redetermination before an immigration judge. 8 C.F.R. §§ 1003.19(a) 1236.1(c)(8), (d)(1); *Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at \*7 (D. Colo. Oct. 17, 2025); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 68-69 (D. Mass. 2025). There are administrative options to challenge a custody determination, including appeal to the Board of Immigration Appeals or requesting a subsequent bond redetermination hearing before an immigration judge if circumstances warrant. *N-N- v. McShane*, 2025 WL 3143594, at \*3 (E.D. Pa. Nov. 10, 2025).

The regulations anticipate that ICE will make an initial custody determination using a Form I-286, Notice of Custody Determination. 8 C.F.R. § 236.1(c)(8), (g)(1). That form provides the initial custody determination that an immigration judge may review under 8 C.F.R. § 1003.19 and cites 8 U.S.C. § 1226(a) as the applicable detention authority (consistent with historical practice of considering noncitizens apprehended within the U.S. subject to detention under 8 U.S.C. § 1226(a)). *See* Form I-286, ECF No. 1-5. For noncitizens detained under 8 U.S.C. § 1226(a), ICE or an immigration judge may order the noncitizen released from custody, if they do not pose a danger or flight risk, on a bond of at least \$1,500. 8 U.S.C. § 1226(a)(2)(A); *N-N-*, 2025 WL 3143594, at \*2. Noncitizens subject to detention under 8 U.S.C. § 1225(b)(2) are not eligible for

bond, as they may only be released if ICE grants humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

Respondents do not contest that Mr. Martinez-Orellana has resided within the United States for many years, has no criminal history and poses no flight risk. Yet ICE has taken every opportunity to keep Mr. Martinez-Orellana in immigration detention pending completion of his removal proceedings, often providing contradictory positions that conflict with case law from this court and others across the country. First, ICE made an initial custody determination on a Form I-286, indicating they intended to retain Mr. Martinez-Orellana in custody, and filed this form in Mr. Martinez' Orellana's removal proceedings. *See* Form I-286, ECF No. 1-5. But, perhaps because that form provides 8 U.S.C. § 1226(a) as detention authority, ICE did not provide that form to the immigration judge at the requested custody redetermination hearing, instead arguing (without documentation) that Mr. Martinez-Orellana is subject to detention under 8 U.S.C. § 1225(b)(2). 8 C.F.R. § 1003.19(d) (Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding); *see* Petition, ECF No. 1 ¶ 27, Supplemental Brief, ECF No. 1-8. Because ICE provided no documentation to support an initial custody determination for the immigration judge to review on redetermination under 8 C.F.R. § 1003.19, the immigration judge dismissed the custody proceedings for lack of jurisdiction. IJ Bond Order, ECF No. 1-3. The immigration judge even recognized that ICE's actions have made it so that his only opportunity for release is by obtaining an order from this Court. *See* IJ Bond Order, ECF No. 1-3.

Respondents do not acknowledge these facts or this procedural history at all in their response. *See generally* Response, ECF No. 10. Nor do Respondents provide a factual declaration

to support this case. Instead, they simply argue that Mr. Martinez-Orellana is subject to detention under 8 U.S.C. § 1225(b)(2). *See id.* Yet this contradicts the Form I-286 they filled out in order to keep Mr. Martinez-Orellana in custody and filed in his immigration proceedings. ECF No. 1-5. Moreover, Respondents failure to submit an initial custody determination for the immigration judge to consider in the bond proceedings under 8 C.F.R. § 1003.19 violated both the regulations requiring such a determination and Mr. Martinez-Orellana's due process rights because he was precluded from having the hearing to which he was entitled after the initial custody determination. Respondents' failure to address these facts or these legal issues, which underly counts 1 and 2 of the petition, should be dispositive to this case.<sup>1</sup> 28 U.S.C. § 2243 (requiring a "respondent to show cause why the writ should not be granted" and "certify[] the true cause of the detention"); *Bland v. California Dep't of Corr.*, 20 F.3d 1469, 1474 (9th Cir. 1994) ("When the State's return fails to dispute the factual allegations contained in the petition and traverse, it essentially admits those allegations."), overruled on other grounds by *Schell v. Witek*, 218 F.3d 1017 (9th Cir. 2000); *Ihor D., v. Noem*, No. 26-CV-351 (JMB/DTS), 2026 WL 146507, at \*1 (D. Minn. Jan. 20, 2026) ("Respondents do not oppose the Petition, and on that basis alone, and considering the factual showings made by Petitioner as recounted above, the Court grants the Petition); *see also Burnette v. Northside Hosp.*, 342 F. Supp. 2d 1128, 1140 (N.D. Ga. 2004) ("Failure to respond to the opposing party's summary judgment arguments regarding a claim constitutes an abandonment of that claim and warrants the entry of summary judgment for the opposing party."); *Brown v.*

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<sup>1</sup> Indeed, Respondents request an additional opportunity to brief any issues should the Court not find this case different from the other cases involving 8 U.S.C. § 1225(b)(2). Response at 4. But Respondents had the opportunity to provide argument in response to the different facts of this case and chose not to defend the agency's actions in their Response. This Court should not provide it a second chance to make a different argument if the Court disagrees with the argument Respondents chose to present.

*Ramsay*, 785 F. Supp. 3d 1214, 1229 (S.D. Fla. 2025) (finding defendant waived challenge to plaintiff's declaratory judgment claim where "in three briefs submitted to the Court over the course of briefing the two Motions, [defendant] never addressed [the claim] despite [plaintiff]'s Motion specifically arguing the issue."); *A.L. v. Jackson Cnty. Sch. Bd.*, 635 F. App'x 774, 787 (11th Cir. 2015) (It is axiomatic that a party "waive[s] their claims by failing to brief them, failing to respond to the [opposing party's] motion for summary judgment, and failing to bring to the court's attention evidence that supported their claims").

Immediate release on these counts is warranted. Respondents have violated Mr. Martinez-Orellana's due process rights by entirely depriving him of the administrative process to which he was entitled. Respondents cannot hide behind their initial determination that Mr. Martinez-Orellana was subject to detention under 8 U.S.C. § 1226(a). ECF No. 1-5. Such a determination comes with a bond hearing. If the government refuses to substantively provide one, notwithstanding the class action requirement to do so under *Maldonado Bautista*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025), Mr. Martinez-Orellano's continued detention violates his due process rights to liberty and procedural due process. *Blanco v. Bondi*, 2025 WL 3908488, at \*6 (W.D. Tex. Dec. 30, 2025). Because Respondents collectively have made every attempt to eliminate his right to due process as provided for under the statute, this Court should order immediate release. *J.U. v. Maldonado*, -- F. Supp. 3d --, 2025 WL 2772765, at \*10 (E.D.N.Y. Sept. 29, 2025) ("Given the deprivation of Petitioner's liberty, formerly granted and approved by Respondent, the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, a writ of habeas corpus is the only form of relief and the most appropriate remedy."); *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Should the Court conclude that ICE's actions do not violate his due process rights as described in counts 1 and 2, habeas relief is still warranted. Notably, Respondent acknowledge that this Court has already ruled on whether someone who is similarly situated to Mr. Martinez-Orellana—insofar as he entered the United States without inspection years ago and was only encountered and detained by ICE recently—is properly classified as being detained under 8 U.S.C. § 1225(b)(2). *Morales Lopez v. Baltazar*, No. 25-cv-3078, 2026 WL 25161 (D. Colo. Jan. 5, 2026); see also *Hernandez v. Baltazar*, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Mendoza Gutierrez*, 2025 WL 2962908. This Court should follow this district's prior decisions on the issue, and Mr. Martinez-Orellana briefly replies to Respondents' arguments to the contrary.

In their response, Respondents rely on the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and a decision issued by a different judge in a different district within this circuit, *Montoya v. Holt*, 2026 WL 373302 (W.D. Okla. Dec. 26, 2025). ECF No. 10 at 2-3. None of these decisions warrant this Court reaching a new result in this case as opposed to the prior cases on this issue.

First, this Court is not bound by, nor does it have any obligation to accept, the Board's poorly reasoned statutory analysis in *Matter of Yajure Hurtado*. See *Pu Sacvin v. De Anda-Ybarra*, 2025 WL 3187432, at \*3 (D.N.M. Nov. 14, 2025) (“The agency's interpretation carries only the ‘power to persuade,’ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024), and most courts have rejected *Hurtado* as inconsistent with the INA's text.”); see Petition, ECF No. 1 ¶¶ 35, 39, 68-74. Second, Respondents' reliance on *Jennings* is misplaced because *Jennings* affirmed that § 1226(a) rather than § 1225(b)(2) “applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 303. The Court acknowledged that “once inside the United States, aliens do

not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission,” but explained that “Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.” *Id.* at 288. Mr. Martinez-Orellana belongs to “that group of aliens” and his detention is governed by § 1226(a). See also *id.* at 289 (“In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).”).

Third, Respondents’ reliance on *Montoya* should not be persuasive. In that case, the District Court for the Western District of Oklahoma disagreed with the statutory analysis of the wealth of district court decisions across the country. *Montoya*, 2025 WL 3733302. But the court in *Montoya* got it wrong at each step of its analysis. For example, in addressing the arguments regarding the titles of the statutory provisions, the district court in *Montoya* failed to acknowledge that the government does not “inspect” noncitizens for admission outside of the process of processing arriving aliens. So while § 1225(b)(2)’s title does not include the term “arriving,” it is clear that § 1225 was designed to apply to noncitizens in the process of being inspected and admitted to or summarily removed from the United States. *Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59, 70 (D.N.H. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025). Additionally, § 1225(a)(3) does not serve to equate “applicant for admission” with someone “seeking admission.” *Cf. Montoya*, 2025 WL 3733302, at \*7. Section 1225(a)(3) includes the word “or” to distinguish “applicant from admission” from the remainder of the sentence, which includes someone who is “otherwise seeking admission.” Respondents’ reading omits the remainder of the provision: “otherwise . . . seeking admission *or readmission to or transit*” through the U.S. 8

U.S.C. § 1225(a)(3) (emphasis added); *see J.G.O. v. Francis*, 2025 WL 3040142, at \*3 (S.D.N.Y. Oct. 28, 2025) (reading “or otherwise . . . to refer to something that is different from something already mentioned” (internal quotation marks and citation omitted)). There is no claim that Mr. Martinez-Orellana was seeking readmission to or transit through the U.S., and thus the whole clause cannot apply to him. Considering the complete statutory text, the Court should disagree with the *Montoya* decision and conclude that “applicant for admission” does not equate to the rest of the statutory language in that section, which includes those “otherwise seeking admission or readmission to or transit through the United States.” 8 U.S.C. § 1225(a)(3). *See Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, --- F. Supp. 3d ----, 2025 WL 3691938, at \*27 (N.D. Cal. Dec. 19, 2025); *Romero v. Hyde*, 795 F. Supp. 3d 271, 284-85 (D. Mass. 2025). Rather, the Court should conclude that some applicants for admission are “seeking admission,” but not necessarily all.

Furthermore, the *Montoya* court’s reliance on § 1225(a)(4) is also misplaced. In this vein, the *Montoya* court reasoned that “applicant” for admission is the same as someone “seeking” admission because the end result is the same: lawful status. 2025 WL 3733302, at \*10. But “[l]awful status and admission . . . are distinct concepts in immigration law[.]” *Sanchez v. Mayorkas*, 593 U.S. 409, 415 (2021). Ultimately, the decisions from within the District of Colorado refute the analysis of the *Montoya* decision and this Court should follow prior decisions from within this court. *See, e.g., Loa Caballero*, 2025 WL 2977650, at \*6; *Mendoza Gutierrez*, 2025 WL 2962908, at \*6-7. *See also* Response at 3.

The Court should also not be swayed by the recent decision in *Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. Feb. 6, 2026). This Court is not bound by that circuit and the panel in *Buenrostro-Mendez* was divided, with the dissent providing a compelling an reasoned statutory interpretation in line with the majority of the country. *Id.* at \*12-18. Moreover, the Fifth Circuit

failed to address the *Maldonado Bautista* class, of which Mr. Martinez-Orellana is a member. Finally, the Fifth Circuit did not address any of the due process issues presented in this case, all of which warrant habeas relief. Accordingly, if the Court does not order immediate release on Counts 1 or 2, it should order release on the remainder of the petition either through an order requiring Mr. Martinez-Orellana's release or by requiring ICE to accept the immigration judge's alternative bond order. IJ Bond Order, ECF No. 1-3. Any order should specify that ICE cannot apply any additional conditions set on his release, and that ICE is required to return all of his personal property including identification. *See Garcia Cortes*, No. 1:26-cv-294, ECF Nos. 13, 18 (D. Colo. Feb. 2, 2026 & Feb. 6, 2026).

#### CONCLUSION

For the foregoing reasons, Mr. Martinez-Orellana requests the Court issue an order concluding that the Respondents failed to respond to all of the counts in his complaint, that he demonstrated that his continued detention is unlawful and/or constitutional, and requiring his immediate release from custody, with no additional conditions set on his release by ICE and requiring ICE to return all of his personal property.

February 12, 2026

Respectfully submitted,

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