IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00359-CNS

JULIO JESUS BUITRAGO MURZI,

Petitioner,

V.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
PAM BONDI, U.S. Attorney General,
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,
ROBERT GUADIAN, Denver Field Office Director, U.S. Immigration and Customs Enforcement,
DAWN CEJA, Warden of Denver Contract Detention Facility,

Respondents.

PETITIONER'S REPLY IN SUPPORT OF THE HABEAS PETITION AND IN RESPONSE TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

INTRODUCTION

1. Respondents' response turns almost entirely on a single proposition whether Petitioner was processed at a port of entry and labeled an "arriving alien," his current pre-final order detention must be treated as mandatory detention under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2)(A), with no bond hearing. That conclusion does not follow from the text of § 1225(b)(2)(A), the overall structure Congress created in §§ 1225 and 1226, or the growing body of federal decisions—particularly in the District of Colorado[1]—holding

[1] *See Nava Hernandez v. Baltazar et al*, No. 1:2025cv03094 - Document 26 (D. Colo. 2025) ("The Court

that § 1226(a) is the operative detention statute for noncitizens who are already in the United States and then arrested and detained on a warrant pending resolution of removal proceedings.

2. Respondents' position also depends on elevating status labels (e.g., "arriving alien" on a Notice to Appear) above the statutory predicates Congress actually wrote into § 1225(b)(2)(A)—including the requirement that an "examining immigration officer" determines that an "alien seeking admission" is not clearly entitled to admission. 8 U.S.C. § 1225(b)(2)(A).

3. Petitioner seeks immediate release, or in the alternative, an order directing Respondents to provide him with a constitutionally adequate bond hearing under 8 U.S.C. § 1226(a) before a neutral decisionmaker with authority to grant release. For the foregoing reasons, the Court should grant *habeas* relief and direct Respondents to release Petitioner, or in the alternative, promptly provide him with a constitutionally adequate bond hearing within seven (7) days.

4. Alternatively, if Respondents argue that Petitioner is detained under § 1225(b)(2), then Respondents must demonstrate that any parole termination or revocation followed the relevant parole law and its regulations, including proper notice. If they cannot, the appropriate action is to order release or proper process.

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is persuaded by Petitioner's interpretation that §§ 1225(b)(2) and 1226 are mutually exclusive. A 'noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226.' *Lopez Benitez*, 2025 WL 2371588, at *4. Indeed, 'if § 1225(b)(2) already mandated detention of any noncitizen who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless.' *Barrera*, 2025 WL 2690565, *4 (cleaned up").

5. Respondents' response further notes that their asserted "material distinction" from other recent District of Colorado cases concerns Petitioner's status at a port of entry, where Petitioner was designated an "arriving alien" applying for admission, lacked valid entry documents, and was "paroled into the United States" after seeking asylum, before being re-detained in 2025. Critically, even taking Respondents' port-of-entry narrative at face value, Respondents still have not shown that § 1225(b)(2)(A) is the governing detention authority for Petitioner's current interior re-detention, rather than the statutory scheme's distinct rules for border inspection, initial processing, and discretionary parole.

STATUTORY AND REGULATORY FRAMEWORK GOVERNING PRE–FINAL ORDER DETENTION

6. Congress established at least two distinct pre–final order detention regimes relevant here. Section 1225, titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing," includes § 1225(b)(2)(A), which states that, "in the case of an alien who is an applicant for admission," if "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," "the alien shall be detained for a proceeding under section 1229a." 8 U.S.C. § 1225(b)(2)(A).

7. Section 1226 (INA § 236) is the general pre–final order arrest-and-detention provision. It authorizes arrest and detention "[o]n a warrant" pending a decision on removal and permits discretionary release, including on bond under § 1226(a)(2), subject to other limitations not invoked in this case (e.g., § 1226(c)). 8 U.S.C. § 1226(a), (c).

8. The statutory architecture matters because courts around the country—and in this

District—have repeatedly treated §§ 1225 and 1226 as addressing different contexts: § 1225 as an inspection/border-admissions-centered framework and § 1226 as the "default" framework for detention of noncitizens already present in the United States and arrested on a warrant while removal proceedings are pending.

9. Congress's subsequent amendments are also significant. In 2025, the Laken Riley Act, Public Law 119–1 (Jan. 29, 2025), was enacted, modifying § 1226(c) to introduce new mandatory detention rules for specific categories, including a new subsection § 1226(c)(1)(E). Courts have used this post-IIRIRA amendment as evidence that § 1226 continues to serve an important function and should not be entirely merged into § 1225(b)(2) for all "unadmitted" interior noncitizens.

10. Finally, where parole under INA § 212(d)(5)(A) is invoked, DHS's parole termination procedures are governed by regulation, including 8 C.F.R. § 212.5(e). That regulation describes circumstances of automatic termination and also provides for termination upon written notice in other circumstances.

ARGUMENT THAT PETITIONER'S CURRENT DETENTION IS GOVERNED BY 8 U.S.C. § 1226(A)

11. Respondents' argument is strongest when confined to its narrowest point at the moment of inspection at a port of entry, where an individual seeking admission can be placed into § 240 proceedings and detained under the § 1225 scheme if parole is not granted. However, that is not the central issue the Court must address. The key question is whether Petitioner's current detention inside the country, after being re-detained in 2025 and prior to the final order, is correctly governed by § 1225(b)(2)(A) or by § 1226(a).

12. The best reading of the statute—and the one this Court has repeatedly endorsed in analogous § 1225 vs § 1226 disputes—is that § 1226(a) governs detention of noncitizens who are already present in the United States and are arrested and detained on a warrant while removal proceedings are pending.

13. First, the textual triggers in § 1225(b)(2)(A) are not satisfied by Respondents' present-tense theory of "seeking admission" in the interior. Section 1225(b)(2)(A) is framed around an "examining immigration officer" making a determination at the point of inspection that an "alien seeking admission" is not clearly entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A). That linguistic structure has been central to the reasoning of District of Colorado decisions rejecting the government's attempt to treat long-present noncitizens as perpetually "seeking admission" for § 1225(b)(2)(A) purposes.

14. Second, while Respondents quote *Jennings* for the proposition that a person "present" and "not admitted" is treated as an "applicant for admission," *Jennings* also describes § 1226 as the framework for detaining noncitizens who are "already in the country.[2]" In contrast to § 1225's role for those seeking entry and subject to inspection at borders/ports of entry. The District of Colorado has relied on that structural explanation in granting *habeas* relief and ordering § 1226(a) bond hearings where the government attempted to proceed under § 1225(b)(2)(A) against individuals already residing in the country. *See Jennings v. Rodriguez*, 583 U.S. 281, 297–98 (2018).

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[2] "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). The primary issue is the proper interpretation of §§1225(b), 1226(a), and 1226(c)." *See Jennings v. Rodriguez*, 583 U.S. (2018).

15. Third, the District of Colorado has repeatedly rejected the government's position that § 1225(b)(2)(A) can be used as a universal, interior mandatory detention rule for anyone unadmitted. In an order issued February 5, 2026 in *Trejo Arenas v. Noem et al.*, Case No. 1:26-cv-00024-SBP, the court construed the dispute as centered on whether § 1225 or § 1226 applies; held that a close reading of § 1225 and Jennings favored § 1226 as the governing detention provision for a noncitizen already present in the United States; and ordered a § 1226(a) bond hearing after the immigration court denied bond based on *Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)*[3][4].

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[3] Related District of Colorado decisions in late 2025 and early 2026 likewise ordered § 1226(a) bond hearings where DHS's own detention paperwork and the statutory structure supported § 1226(a) rather than § 1225(b)(2)(A). *See Briales-Zuniga v. Baltazar et al*, No. 1:2025cv03439 - Document 12 (D. Colo. 2026).

[4] The Government's reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is misplaced. The decision was issued in a bond appeal that (as argued in Respondent's motion to reconsider) was moot before publication because the respondent was already subject to a final removal order—making the Board's choice to issue a published merits ruling procedurally defective and, at minimum, of diminished persuasive value. *See* Exhibit A. See also *Matter of Valles*, 21 I&N Dec. 769, 773 (BIA 1997) (bond appeal rendered moot by subsequent custody redetermination); *Matter of Luis*, 22 I&N Dec. 747, 753 (BIA 1999) (Board may dismiss as moot, "as a matter of prudence," when a controversy is deprived of practical significance).

In any event, *Yajure Hurtado* is *ultra vires* of the Board's delegated authority because it effectively rewrites binding Attorney General custody regulations—without rulemaking—by converting a narrow, regulation-based "arriving alien" bond bar into a sweeping prohibition for virtually all noncitizens charged as present without admission. Compare 8 C.F.R. §§ 1236.1(d)(1), 1003.19(h)(2)(i)(B) (IJ bond jurisdiction before a final order; categorical bar limited to "arriving aliens" and other enumerated classes) with 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (final interim rule explaining that "inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge"). The Board has repeatedly stated that it lacks the authority to invalidate or disregard Attorney General regulations. *See*, e.g., *Matter of Akram*, 25 I&N Dec. 874, 875 (BIA 2012). Basic administrative law likewise forbids an agency from accomplishing a de facto amendment of a binding legislative rule through adjudication rather than notice-and-comment rulemaking. *See*, e.g., *Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003).

Nor does *Yajure Hurtado* warrant deference in federal habeas proceedings. Under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024), courts must exercise independent judgment and may not defer to an agency interpretation simply because a statute is ambiguous. Federal courts evaluating the same detention theory have thus declined to treat *Yajure Hurtado* as controlling or persuasive and have ordered bond hearings under INA § 236(a), 8 U.S.C. § 1226(a).

16. Fourth, Respondents' reliance on the NTA's "arriving alien" checkbox does not resolve the statutory question of current detention authority. The § 1225(b)(2)(A) text does not say "any person ever labeled arriving is forever mandatorily detained"; it ties mandatory detention to inspection-stage determinations by an examining officer about an alien seeking admission. 8 U.S.C. § 1225(b)(2)(A). The District of Colorado has repeatedly required the government to satisfy the statutory predicates and has rejected attempts to transform categorical labels into a bondless detention rule for individuals already present here.

17. Fifth, even accepting *arguendo* that "arriving alien" remains a relevant regulatory label after parole, Respondents still must connect that label to the right detention statute. The regulations define "arriving alien" and, in some contexts, treat parolees as remaining "arriving" even after parole termination. But a definitional regulation cannot overwrite the distinct detention authorities and predicates Congress enacted in §§ 1225 and 1226.

RESPONSES TO RESPONDENTS' AUTHORITIES AND THEIR "PORT OF ENTRY" DISTINCTION

18. Respondents' due process discussion relies heavily on cases about the political branches' border power (*e.g.*, *Knauff*, *Mezei*, *Flores-Montano*), and on the "entry fiction" described *in Department of Homeland Security v. Thuraissigiam*, 591 U.S. ___ (2020). Those cases do not decide the statutory question this case presents, whether § 1225(b)(2)(A) supplies ongoing mandatory detention authority for a person re-detained inside the United States during § 240 proceedings, rather than § 1226(a).

19. To be clear, Petitioner does not dispute that Congress has substantial power at

the border and that noncitizens seeking initial admission may have more limited due process claims about admission itself. *See*, e.g., *Landon v. Plasencia*, 459 U.S. 21 (1982). But Respondents' cases about exclusion and border searches do not authorize the government to select the wrong detention statute.

20. Likewise, Respondents' reliance on *Demore v. Kim*, 538 U.S. 510 (2003), is misplaced. *Demore* upheld mandatory detention under § 1226(c) for certain criminal noncitizens during removal proceedings, but its holding does not rewrite §§ 1225 and 1226 or resolve which statute governs Petitioner's detention authority.

21. Respondents also cite the BIA's recent interpretation of § 1225(b)(2)(A) in *Matter of Yajure Hurtado*. But *Yajure Hurtado* is not binding on this Court's independent interpretation of the INA, and after *Loper Bright Enterprises v. Raimondo*, courts must exercise independent judgment on statutory meaning and may not defer to an agency interpretation merely because the statute is ambiguous.

22. This District has already treated *Yajure Hurtado* as unpersuasive in multiple § 1225 vs § 1226 *habeas* cases and has ordered § 1226(a) bond hearings notwithstanding the immigration court's reliance on *Yajure Hurtado*.

23. Respondents cite other district court decisions and other case-specific filings that are not controlling here. Petitioner's position is that this Court should follow the District of Colorado's reasoning grounded in statutory text, statutory structure, and *Jennings*'s description of the two detention regimes—particularly where Petitioner's present detention is occurring in the interior while § 240 proceedings remain pending.

24. Finally, Respondents' response was filed on February 6, 2026, the same day the

United States Court of Appeals for the Fifth Circuit issued *Buenrostro-Mendez v. Bondi,* Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), reversing two district court grants of bond hearings and holding that unadmitted noncitizens apprehended in the interior are "seeking admission" for purposes of § 1225(b)(2)(A). Petitioner anticipates Respondents may urge this Court to follow *Buenrostro-Mendez*. This Court should decline to do so because it is non-binding in the Tenth Circuit and conflicts with the analysis already adopted repeatedly in this District and by many other federal courts nationwide.

ALTERNATIVE GROUNDS REQUIRING RELIEF EVEN IF RESPONDENTS INVOKE § 1225(b)(2)

25. Even if the Court were to accept Respondents' premise that Petitioner remains a § 1225(b)(2) detainee, Respondents' response does not grapple with the legal constraints on parole termination or revocation and re-detention of parolees.

26. Parole under INA § 212(d)(5)(A) is governed by implementing regulations, including 8 C.F.R. § 212.5(e), which addresses termination of parole and contemplates notice-dependent procedures in many circumstances. Federal courts addressing re-detention after parole have treated compliance with these parole termination rules as legally significant and ordered relief when the government could not show that parole was lawfully terminated in accordance with the governing regulation or justify the abrupt shift from liberty to confinement without the required process.

27. In addition, Respondents' response cites *Thuraissigiam* for the proposition that even parolees can be treated as if stopped at the border for some due process purposes. But *Thuraissigiam* does not hold that DHS can revoke parole and re-detain people without

adhering to its own parole termination regulation, or without any meaningful process, particularly where the government's asserted authority results in prolonged physical confinement in civil detention.

28. Accordingly, if Respondents maintain § 1225(b)(2) is the governing authority here based on Petitioner's parole history, the Court should require Respondents to produce evidence and legal justification establishing: (i) the basis and terms of parole; (ii) how parole was terminated under 8 C.F.R. § 212.5(e); and (iii) why re-detention without any neutral custody review is lawful in Petitioner's specific circumstances.

CONCLUSION

29. Respondents ask the Court to treat Petitioner's interior re-detention as mandatory "inspection" detention under § 1225(b)(2)(A) solely because Petitioner initially presented at a port of entry and was labeled an "arriving alien." But § 1225(b)(2)(A)'s text, the INA's structure, and the persuasive and increasingly consistent body of federal authority—especially in the District of Colorado—support the conclusion that Petitioner's current detention is governed by 8 U.S.C. § 1226(a) and that Petitioner is entitled to a prompt bond hearing.

30. For these reasons, Petitioner respectfully requests that the Court grant the Petition and order Respondents to provide a § 1226(a) bond hearing within a short, defined period, with appropriate safeguards and a status report confirming compliance, consistent with this District's practice in analogous cases.

Dated: February 12, 2026 **/S/ Luis Angeles**

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, PETITIONER'S REPLY IN SUPPORT OF THE HABEAS PETITION AND IN RESPONSE TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for *Writ* of *Habeas Corpus* are true and correct to the best of my knowledge.

Dated: February 12, 2026

/s/Luis Angeles
Luis Angeles

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2026, I filed the foregoing PETITIONER'S REPLY IN SUPPORT OF THE HABEAS PETITION AND IN RESPONSE TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Dated: February 12, 2026

/s/Luis Angeles
Luis Angeles