

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MANDEEP SINGH,**

Petitioner,

v.

**JAMIE RAYE CARNES, *et al.*,**

Respondents.

**Case No. 26-cv-210-MIS-JFR**

**REPLY IN SUPPORT OF PETITION  
FOR WRIT OF HABEAS CORPUS**

**INTRODUCTION**<sup>1</sup>

Over three years ago, DHS released Mr. Singh on his own recognizance under 8 U.S.C. § 1226(a) because he was neither a danger nor a flight risk. In the months and years since, he has lawfully applied for asylum and other relief from removal, has enjoyed the liberty of living in this country, and has begun to build a life for himself here. Respondents do not argue that he is now a danger or flight risk, nor do they contend that he violated the terms of his release, nor do they suggest that his release was validly revoked. In fact, despite having more than two weeks to respond to Mr. Singh’s Petition, and despite their claim to have “carefully reviewed” the Petition, Respondents fail to respond to his due-process arguments at all.

Indeed, the only justification Respondents give for his detention is a two-and-a-half-page response that does not really respond to his specific allegations, but instead purports to incorporate by reference arguments from a sealed document in another case. Because courts, including in this

---

<sup>1</sup> Petitioner leaves to the sound discretion of the Court whether to entertain Respondents’ late-filed response, but submits this reply in case the Court considers Respondents’ arguments.

district, have held that such a practice is impermissible, and because cursory arguments like the ones Respondents make here are tantamount to a waiver, the Court should grant Mr. Singh's petition and order his immediate release subject to the preexisting terms of his order of release on recognizance.

Petitioner agrees with Respondents, however, that if the Court finds Respondents have not waived any opposition and proceeds to reach the merits of the Petition, this case should be governed by this Court's rulings in cases like *Duhan v. Noem*, 2:26-cv-00019-MIS-JFR, 2026 WL 266619 (D.N.M. Feb. 2, 2026), which granted a petitioner immediate release under circumstances similar to this case.

### ARGUMENT

**I. Respondents' failure to acknowledge Mr. Singh's actual arguments constitutes waiver and entitles the Court to grant his petition and order his immediate release.**

Respondents totally ignore Mr. Singh's arguments regarding the improper revocation of his order of release on recognizance. *See* Dkt. 1 at ¶¶ 6, 8, 80-90, 99; Dkt. 1-1 at 1. Failure to respond to claims in a habeas petition constitutes waiver and permits this Court to grant the requested relief. *See, e.g., Fuentes Gomez v. Olsen*, 2026 WL 413371, at \*2 (S.D. Ind. Feb. 13, 2026); *Garcia-Henriquez v. Larose*, 2026 WL 323328, at \*1, n.1 (S.D. Cal. Feb. 6, 2026); *Diego L. v. Bondi*, 2026 WL 145206, at \*3 (D. Minn. Jan. 20, 2026); *F.B. v. Noem*, 2025 WL 3628652, at \*1 (D. Ariz. Dec. 4, 2025); *N.A.L.R. v. Bondi*, 2025 WL 2987239, at \*3 (S.D. Ind. Oct. 23, 2025).

Numerous courts have found that when the Government determines a noncitizen not to be a danger or a flight risk and releases that person on their own recognizance, it creates a liberty interest that cannot be arbitrarily revoked without due process, and that absent a pre-deprivation

hearing, immediate release is required. *See, e.g., Villafranca Lara v. Ladwig*, 2026 WL 401204, at \*1, 9 (W.D. Tenn. Feb. 12, 2026); *Singh v. Taylor*, -- F. Supp. 3d --, 2026 WL 360913, at \*4 (W.D. Tex. Feb. 9, 2026) (“[W]ithout the need to specify the exact procedures Petitioner would have been entitled to if he had been released on an order of recognizance, Respondents do not rebut Petitioner’s assertion that he was not afforded any process whatsoever”); *Grdzeldze v. LaDeon*, 2026 WL 266797, at \*1-2 (S.D.N.Y. Feb. 2, 2026); *Lopez v. Lyons*, 2025 WL 3124116 (E.D. Cal. Nov. 7, 2025); *J.C.L.A. v. Wofford*, 2025 WL 2959250 (E.D. Cal. Oct. 17, 2025); *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. Wash. 2025); *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025); *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025); *Maklad v. Murray*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025); *Garcia v. Andrews*, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025); *Rodriguez v. Kaiser*, 2025 WL 2855193 (E.D. Cal. Oct. 8, 2025), at \*6.<sup>2</sup>

Other courts, while not explicitly conducting the same due-process analysis, have nevertheless ordered release under these circumstances, noting that the Government’s previous

---

<sup>2</sup> A number of other courts have conducted a similar analysis with regard to petitioners released on bond under § 1226(a), instead of on their own recognizance under that same statute. *Tamarit-Ferrer v. Rivas*, 2026 WL 295687, at \*2 (D. Ariz. Feb. 4, 2026) (citing *Ahmed v. Rhoney*, 2026 WL 262553, at \*2 (W.D.N.Y. Feb. 2, 2026)) (rejecting argument that “the government can unilaterally re-detain an individual released on bond years later with no individualized hearing or demonstrated change in circumstances.”); *Tercero v. LaRose*, 2026 WL 206312, at \*2-3 (S.D. Cal. Jan. 27, 2026) (petitioner released on bond and re-arrested was entitled to pre-deprivation hearing) (collecting cases); *Azalyar v. Raycraft*, -- F. Supp. 3d --, 2026 WL 30741, at \*5 (S.D. Ohio Jan. 2, 2026) (where noncitizen was previously released, Government was required to hold a hearing and show “materially changed circumstances” before re-detaining him); *Cuya-Priale v. Castro*, 2025 WL 3564145, at \*2 (D.N.M. Dec. 12, 2025) (“courts require ‘a material change in circumstances as to whether the noncitizen poses a danger to the community or an unreasonable risk of flight’ before [] revocation”) (collecting cases); *Orellana v. Noem*, -- F. Supp. 3d --, 2025 WL 3006763, at \*6 (W.D. Ky. Oct. 27, 2025) (where noncitizen was previously released on bond, hearing was required prior to re-detention).

determination that a person was not a danger or flight risk justified the court in granting immediate release without the need for a bond hearing. *See, e.g., Singh v. Baltazar*, -- F. Supp. 3d --, 2026 WL 352870, at \*3 (D. Colo. Feb. 9, 2026); *Gonzalez v. Noem*, 2025 WL 3140802 (W.D. Ky. Nov. 10, 2025); *cf. Villa Hernandez v. Kunes*, 2026 WL 411726, at \*1, 6 (M.D. Pa. Feb. 13, 2026) (noncitizen released on recognizance and subsequently re-detained without bond was entitled to immediate release); *Abdulahi A.M. v. Bondi*, 2026 WL 323523, at \*1-2 (D. Minn. Feb. 6, 2026) (similar); *Diallo v. Baltazar*, 2026 WL 237296 (D. Colo. Jan. 29, 2026) (similar).

Here, Mr. Singh has alleged he was released on his own recognizance under 8 U.S.C. § 1226(a) and has provided a copy of the order of release on recognizance. Dkt. 1-1. Respondents have not challenged the accuracy of these allegations, nor have they offered any argument in response to his contention that his re-detention under these circumstances violates his right to due process. In nearly identical circumstances, courts have held that this constitutes waiver. In *Fuentes Gomez*, for example, the petitioner argued “that she was arrested while on parole and therefore her detention violates the Constitution and laws of the United States.” 2026 WL 413371, at \*1. The Government’s response, however, was mere boilerplate, and did not actually respond to the arguments the petitioner made. *See id.* at \*2. The Government’s total failure even to refer to the petitioner’s arguments about her due-process rights while on parole meant that “[t]hey therefore waived any defense to Gomez’s argument that she is currently on parole and that her parole makes her detention unlawful.” *Id.* Accordingly, the court granted immediate release. *Id.* at \*3. Similarly, in *F.B.*, the petitioner “alleged she has a liberty interest in her release on parole and her subsequent arrest [] without any predeprivation process violated her due process rights ... Respondents do not

acknowledge or address Petitioner's actual arguments. The Court therefore finds Respondents have waived any challenge to them." *F.B.*, 2025 WL 3628652, at \*1.

Here, where Respondents' response does not even acknowledge Mr. Singh's argument that his re-detention without a pre-deprivation hearing violated his right to due process, the Court should find any objection to relief on this ground waived and order his immediate release.

**II. The Court should reject Respondents' attempt to incorporate briefing from another case by reference and conclude that Respondents have waived any argument not contained in their response in this case.**

Respondents state that they "hereby rely upon, and incorporate by reference, the legal arguments presented in *Duhan v. Noem*," specifically "all arguments raised in its opposition brief in *Duhan v. Noem*." Dkt. 9 at 3. As an initial matter, the pleadings in that case are sealed pursuant to Fed. R. Civ. P. 5.2, meaning that Mr. Singh has no access to that brief or its arguments.

Although Fed. R. Civ. P. 10(c) provides for adoption by reference in some circumstances, numerous courts have held that "referencing a pleading from a different case is impermissible, even if the two cases involve the same parties." *Macias v. New Mexico Dep't of Labor*, 300 F.R.D. 529, 562 (D.N.M. 2014); *see also Spirit Lake Tribe v. Jaeger*, 2019 WL 13299003, at \*1 (D.N.D. June 17, 1999) ("allegations in pleadings in another action, even if between the same parties, cannot be incorporated by reference") (citing 5A Wright & Miller, *Federal Practice and Procedure* § 1326 (4th ed. 2018) (collecting cases prohibiting incorporating by reference pleadings from another case)). One reason for this is "that statements made in a different case are not part of the record in this case, and an incomplete record presents many problems on appeal because a party may not incorporate district court pleadings by reference in an appellate court proceeding." *Id.* at \*2 (citing *Argota v. Miller*, 424 F. App'x 769, 771 (10th Cir. 2011)); *see also Kinman v. Saraya*

*USA, Inc.*, 2026 WL 156437, at \*4 (N.D. Ill. Jan. 21, 2026) (“arguments ‘incorporated by reference’ are ‘waived’”) (citing *Parker v. Franklin Cnty. Cmty. Sch. Corp.*, 667 F.3d 910, 924 (7th Cir. 2012) (“[B]riefs may not incorporate other documents by reference.”)); *Blackwell v. Jones Day Law Firm*, 2021 WL 764124, at \*3 (E.D. Mich. Feb. 26, 2021) (plaintiff could not incorporate by reference filings from another case, particularly where the filing was under seal).

Here, where the Government’s brief contains almost no real response to the allegations in Mr. Singh’s petition, the Court should find that its attempt to incorporate arguments from another case is improper and that the only arguments that may be considered are the cursory ones contained in their short response. As one court in this district has noted, “the Tenth Circuit said that arguments made in a cursory manner ... are waived.” *United States v. Martinez*, 542 F. Supp. 3d 1170, 1185 (D.N.M. 2021); *see also United States v. Gordon*, 710 F. 3d 1124, 1150 (10th Cir. 2013) (“the arguments are presented in a perfunctory and conclusory fashion, and we are rightly hesitant to definitively opine on such legally significant issues when they have received such cursory treatment”).

Accordingly, since Respondents’ attempt to incorporate another brief is impermissible, and their two-and-a-half page response to Mr. Singh’s 30-page habeas petition is merely cursory and perfunctory, the Court should find that Respondents have waived any substantive argument to the relief Mr. Singh seeks.

**III. The Court should decline to consider Respondents’ arguments under *Buenrostro-Mendez v. Bondi*, or, in the alternative, should reject them on the merits.**

Respondents allude in a footnote to *Buenrostro-Mendez v. Bondi*, -- F.4th --, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Dkt. 9 at 3, n.1. Again, though, “arguments made in a cursory manner, such as a footnote, are waived.” *Martinez*, at 542 F. Supp. 3d at 1185. Since Respondents

make no actual argument about why *Buenroostro-Mendez* (which they acknowledge is not binding) should control over the previous decisions of both this Court and virtually every other jurist in this district, the Court should consider any such argument waived.

However, if the Court considers *Buenroostro-Mendez*, it should follow the recent decision of Judge Sweeney in the District of Colorado, who thoroughly debunked the Fifth Circuit majority opinion in *Singh v. Baltazar*, -- F. Supp. 3d --, 2026 WL 352870, at \*3-6 (D. Colo. Feb. 9, 2026). In that case, the court found that “the majority [paid] lip service” to “the bedrock principle ... that statutory terms are given their plain and ordinary meaning,” while “actually disregard[ing] that principle. *Id.* at \*4. The court also noted that the panel majority’s position “create[s] redundancies in the controlling statutory provisions,” while “the better reading of the statute,” such as the one this Court has employed in cases like *Duhan*, “contains no redundancy at all.” *Id.* at \*5. In short, the court found that the statutory interpretation question was “no contest” and that “Congress ... clearly expressed that § 1225 shouldn’t apply here.” *Id.* at \*6 (citing *Buenroostro-Mendez*, 2026 WL 323330, at \*13) (Douglas, J., dissenting). Since Respondents offer no actual argument as to why *Buenroostro-Mendez* requires this Court to rethink its approach from recent cases, the Court should decline to do so.

### **CONCLUSION**

If Respondents are going to deprive a man of his liberty and subject him to indefinite detention without bond, they should be required, at a minimum, to offer a better justification for it than they have (belatedly) done in this case. Since their response does not acknowledge or refute the arguments in Mr. Singh’s Petition, and since the Government has already previously determined Mr. Singh not to be a danger or flight risk, and because this Court has already

decisively rejected Respondents' arguments in other recent, legally indistinguishable cases, the Court should order his immediate release.

Dated: February 16, 2026

Respectfully submitted,

/s/ James D. Jenkins  
James D. Jenkins (NMD #25-394, WA#63234)  
P.O. Box 6373  
Richmond, VA 23230  
Tel.: (804) 873-8528  
jjenkins@valancourtbooks.com  
*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 16th day of February, 2026, which sent electronic notice to all parties receiving such notice.

/s/ James D. Jenkins  
Attorney for Petitioner