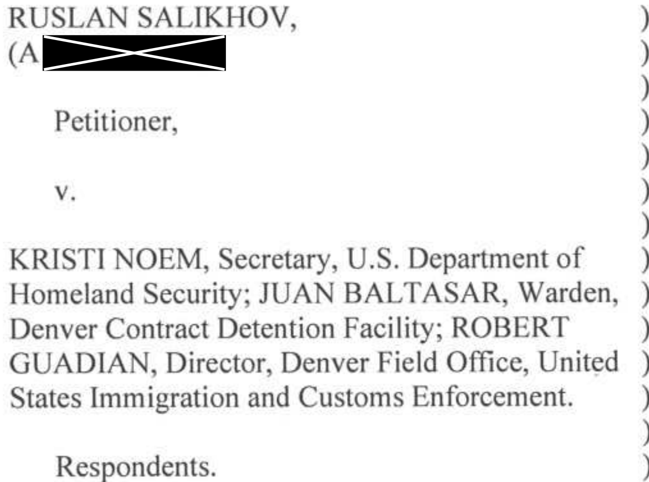
UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLORADO



RUSLAN SALIKHOV,)
(A[redacted])
)
Petitioner,)
)
v.)
) Case No. 1:26-cv-519
KRISTI NOEM, Secretary, U.S. Department of Homeland Security; JUAN BALTASAR, Warden, Denver Contract Detention Facility; ROBERT GUADIAN, Director, Denver Field Office, United States Immigration and Customs Enforcement.)
)
Respondents.)

PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

The Petitioner, RUSLAN SALIKHOV, by and through his own and proper person and through his attorneys, KRIEZELMAN BURTON & ASSOCIATES, LLC, files this reply memorandum to the government's response filed on March 5, 2026, and in support thereof, states as follows:

A. Petitioner is currently detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

By way of review, 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of "Applicants for Admission." Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. This argument fails for several reasons.

First, district courts across the country have unanimously rejected this interpretation, in cases similar factually and procedurally to Petitioner. *See* Dkt. 1. To start, while it is undisputed that in 2024, Petitioner was an arriving alien and was paroled into the country for one year, he overstayed his grant of parole akin overstaying a visa. *Rafibaev v. Noem et. al.*, No. 26-CV-00461-PAB, 2026 WL 607559, at *2 (D. Colo. Mar. 4, 2026). (noting that "[s]ection 1182(d)(5)(A) suggests that rather than reverting to any prior status, a noncitizen whose parole has expired is treated like the vast majority of undocumented immigrants currently living in this country who are not subjected to expedited removal." *Rodriguez-Acurio*, 2025 WL 3314420, at *17.) In turn, Respondents argue that since he entered without admission, he remains an applicant for admission, even after two years of entering the U.S. However, their argument fails as they even admit and characterize Petitioner as a person who applied for admission and was released (in past tense). *See* Dkt 13, 13-1, 13-2. Indeed, when the government decided that Petitioner should be paroled into the country in 2024, it provided an Interim Notice Authorizing Parole (*see* Dkt. 13-3), which allowed him to remain out of mandatory custody, pursue his asylum claim outside of custody with his family, and as a result he was no longer an applicant for admission seeking admission. Accordingly, the temporal limitation of the plain language of 8 U.S.C. § 1225 helps ensure that there is a distinction between people that are *currently* arriving aliens and applicants for admission at a port of entry as we speak, and not someone like Petitioner who has lived and contributed to his community for over two years and whose detention is now governed by 8 U.S.C. § 1226.

Second, while Respondents attempt to distinguish Petitioner's case from *Rafibaev v. Noem et. al*, the factual, procedural, and argumentative similarities should not be ignored. No. 26-CV-00461-PAB, 2026 WL 607559, at *2 (D. Colo. Mar. 4, 2026). To start, both petitioners

are from Russia, entered within three months from each other through the same port of entry (Progreso), and were both paroled into the United States. Additionally, in *Rafibaev* the Court unequivocally found that section 1182(d)(5)(A) does not require petitioner to be detained under the same statutory status as his original detention. *Id.* at 4 (finding that "[m]any courts analyzing this question have reached the same conclusion. *See Qasemi v. Francis,* 2025 WL 3654098, at *11 (S.D.N.Y. Dec. 17, 2025), (collecting cases). Respondents argue that *Rafibaev* did not reach the issue of whether he was properly detained under U.S.C. § 1225(b)(2)(a). Petitioner believes that was an intentional omission considering that Respondents could not have detained him under U.S.C. § 1225(b)(1) because Petitioner had been paroled. Indeed, here, by Respondents conceding that Petitioner was recently detained under 8 U.S.C. § 1225(b)(2)(a) (**"Inspection of other aliens")** they are admitting that he is no longer an arriving alien (which is codified under 8 U.S.C. § 1225(a) and 8 U.S.C. § 1225(b)(1) only) and that the analysis in cases nationwide for individuals apprehended in the interior applies. *See* Dkt. 1. Thus, this Court should follow the overwhelming number of cases that have favored Petitioner's position. *Id.*

Third, when Petitioner entered in 2024, the government had the option to place Petitioner in expedited removal proceedings or, at minimum, detain him pursuant to § 1225 of the Immigration and Nationality Act ("INA"). Instead, in this case, the narrative of Petitioner's 2024 custody documents clearly show he was paroled and was released under 8 U.S.C. § 1226. *See* Dkt. 13-3. Indeed, the Interim Notice Authorizing Parole specified conditions and obligations to inform the immigration judge of any address corrections, considering he was placed in full removal proceedings and not in expedited removal proceedings. *See* Dkt. 13, 13-1, 13-3. Thus, the government chose to take Petitioner out of the mandatory detention category, pursuant to 8 U.S.C. § 1225 and into 8 U.S.C. § 1226, as a person already present into the United States.

Jennings v. Rodriguez, 583 U.S. 281, 289 (2018). This distinction illustrates Petitioner is currently detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

In sum, Respondent's evidence related specifically to Petitioner's case supports Petitioner's argument and any attempt to construe Petitioner as being currently an "applicant for admission" "seeking admission", as a continuing, present, and constant action is equivalent to arguing that an unannounced guest is still "arriving" after two years of living inside a house.

B. The Court Has Jurisdiction Over the Matter

This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(b)(9) and (g) as Petitioner's claims do not challenge any decision to commence proceedings, adjudicate cases, or execute removal orders. Section 1252(b)(9) provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added).

The Supreme Court's decision in *Jennings v. Rodriguez* is instructive here and supports Petitioner's position that this Court does have jurisdiction and that Section 1252(b)(9) does not present a jurisdictional bar. The Supreme Court determined that the "arising from" language of Section 1252(b)(9) should not be interpreted so expansively as to include any action that technically follows the commencement of removal proceedings, because that would bar judicial review of questions of law and fact that are unrelated to the removal proceedings until a final order of removal was issued. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018). Petitioner,

like the class in *Jennings*, "are not asking for review of an order of removal, they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined." *Id.* at 294-95. Section 1252(g) provides:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien *arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.*

8 U.S.C. § 1252(g) (emphasis added).

The Supreme Court's decision in *Jennings* also addresses the application of Section 1252(g). The *Jennings* court writes that "[w]e did not interpret [section 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves." *Jennings*, 583 U.S. at 294 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)).

An immigration judge's (IJ) review of a bond determination is a distinct proceeding from an alien's underlying removal proceeding. 8 C.F.R. § 1003.19(d). It is "clear bond hearings are separate and apart from deportation proceedings." *Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982). Here, Petitioner is seeking his immediate release pursuant to his unlawful detention and, alternatively, a review of his unlawful detention through a bond hearing. *See* Dkt. 1. Alternatively, given that his detention is currently governed by 8 U.S.C. § 1226, he is unable to seek a bond hearing in front of the Immigration Court as a result of the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Moreover, Petitioner is not challenging a removal order or anything else listed in Section 1252(b)(9) and (g)

which would strip this court of jurisdiction. Thus, this Court has jurisdiction over Petitioner's matter.

Lastly, this Court is not required, and should not, give deference to the recent Board decision cited in Respondent's brief. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The Court in *Jennings* was abundantly clear about these interpretations. Petitioner in this case is not a new arrival and had been in the United States for over two years at the time of his detention.

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the numerous district court decisions confirm that he is subject to section 1226(a)'s discretionary detention scheme.

C. The proper relief for unlawful detention is immediate release

The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit

the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

a. **Immediate Release**

Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas should shall "dispose of the matter as law and justice require."); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in a case like this, where Petitioner was has been detained in violation of both the INA and due process, is release on recognizance without further conditions of release. *See Ambroladze v. Maldonado*, No. 26-CV-00474 (HG), 2026 WL 280182, at *3 (E.D.N.Y. Feb. 3, 2026) (given that the typical remedy for unlawful detention is release, "the government's ongoing detention of Petitioner, in the face of yet another complete failure of process, entitles him to immediate release.")

Dozens of courts across the country have agreed. *See, e.g., Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (same); *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (same); *Gonzalez Centeno v. Lowe*, No. 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); *Feisal O. v. Noem*, No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (same); *Garcia Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (same) *Kenzhebaev v. Noem*, No. 1:25-cv-1786, 2025 WL 3737975, at *9 (W.D. Mich. Dec. 29, 2025) (same); *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (same, finding a bond hearing unnecessary where there was no indication petitioner was

a danger or flight risk); *Ortega-Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025) (same); *Bumbila Iza v. Arnott*, No. 6:25-cv-3392, 2026 WL 67152, at *5 (W.D. Mo. Jan. 8, 2026) (same); *see also Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 154 (W.D.N.Y. 2025) (ordering release and that petitioner could not be detained without a pre-deprivation hearing); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17, 2025) (same); *Sekhon v. Warden of Golden State Annex Det. Facility*, No. 1:25-cv-1692, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026) (same).

b. Bail Hearing by the Habeas Court

In the alternative, the habeas court can hold its own custody hearing and determine whether ICE can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his ability to pay, or supervised release. This is a more efficient and effective remedy than ordering an immigration judge to conduct a hearing, which may lead to additional enforcement proceedings and delays before the unlawful detention in this case is remedied. *See L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex.

Nov. 3, 2010), rep. and rec not reached, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

CONCLUSION

For the foregoing reasons, this Court should order Petitioner's immediate release. In the alternative, this Court may order Respondents to schedule a neutral bond hearing under section 1226 where Respondents have the burden to establish by clear and convincing evidence that Petitioner is a danger or a flight risk for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order.

Dated: March 12, 2026

Respectfully Submitted,

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