UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

LUIS ALFREDO CHAVELAS ROSAS,	)	
	)	
Petitioner,	)	Case No. 1:26-cv-00531-NYW
v.	)	
	)	
JUAN BALTAZAR, *in his official capacity* as Warden of the Aurora ICE Processing Center;	)	
	)	
ROBERT HAGAN, *in his official capacity* as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement;	)	
	)	
TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement,	)	
	)	
KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and	)	
	)	
PAMELA JO BONDI, in her official capacity as Attorney General of the United States;	)	
	)	
Respondents.	)	

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO APPLICATION FOR WRIT OF HABEAS CORPUS (ECF No. 8)

Petitioner, by and through undersigned counsel, submits this Petitioner's Reply to Respondent's Response to Application for Writ of Habeas Corpus. Respondents submitted an "abbreviated response" to Petitioner's Writ of Habeas Corpus maintaining their mistaken reliance on *Jennings* for their position that a noncitizen who is present in the United States and has not been admitted or paroled is subject to mandatory detention by U.S. Immigration and

Customs Enforcement ("ICE") under 8 U.S.C. § 1225(b)(2) rather than being subject to detention under § 1226(a) which would entitle noncitizens in that position to seek a bond hearing. ECF No. 8. Page 2.

It is Petitioner's position that the Respondents are misinterpreting the Court's statements in *Jennings v. Rodriguez,* 583 U.S. 281 (2018) and improperly cite *Jennings* regarding the Court's statements on applicants for admission. Further, Petitioner is a class member of the "Bond Eligible Class" as certified by final judgment in the U.S. District Court Central District of California and his continued detention without the opportunity for a Bond Hearing is in violation of the Immigration and Nationality Act ("INA") and a violation of Petitioner's Due Process rights. For the reasons below, this Court should grant Petitioner's Application for a Writ of Habeas Corpus and order him to be scheduled for a bond hearing within seven days or to be immediately released from unlawful custody.

ARGUMENT

I. This Court has Jurisdiction to grant Petitioner's Application for a Writ of Habeas Corpus

In their brief attached as an exhibit to their Response to Application for Writ of Habeas Corpus, Respondents argue that district courts lack jurisdiction to grant relief in a case involving removal proceedings and detention of a noncitizen, citing 8 U.S.C. §1252. ECF No. 8 Ex. A, pg. 8-9. This is incorrect. The statute Respondents rely on, §1252, vests the Courts of Appeals with exclusive jurisdiction to review a final order of removal against a noncitizen, after the noncitizen has exhausted all administrative remedies. 8 U.S.C. §1252(a)(1),(b), and (d). Petitioner's removal proceeding before the Executive Office for Immigration Review ("EOIR") began with the issuance of his Notice to Appear and his case is currently pending before Board of

Immigration Appeals ("BIA"). *See* ECF No. 1, Ex. 2. No final order of removal has been issued in Petitioner's case, and thus the Tenth Circuit Court of Appeals would have no jurisdiction over his case at this stage. 8 U.S.C. §1252.

As Petitioner argued in his initial petition and argues below in this Reply, he is not subject to detention under 8 U.S.C. §1225(b), and may be detained, if at all under §1226(a), and as such has the constitutional and statutory right to a bond hearing, and if granted bond, to be released while his removal proceedings before the BIA are ongoing. Respondents contend that Petitioner's detention is a "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," which would deprive the district courts of jurisdiction under §1252(b)(9) and (g). If this were true, Petitioner would be compelled to go through the entirety of his proceedings before the BIA while still unlawfully detained. Only if and when the BIA dismisses his appeal would he be able to seek review of a final order before the Tenth Circuit. This is likely to be a years-long process and Petitioner would be unlawfully detained throughout that time, contrary to his statutory and constitutional rights. By the time his case reached the Tenth Circuit, the question of whether he may be lawfully detained under §1225(b) or §1226(a) during his removal proceedings would be moot; after a final order of removal is issued, detention and release are instead governed under §1231(a). Therefore, to require Petitioner to challenge his detention during removal proceedings only before the Tenth Circuit after a final order of removal is issued would be illogical and in violation of Petitioner's constitutional due process and statutory rights. It would allow Respondents to entirely evade judicial review of their improper application of §1225(b) to persons whose detention is properly governed by §1226(a).

District Courts have jurisdiction to grant writs of habeas corpus to a person who is "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2241(a), (b)(3). The Tenth Circuit has held that this includes persons detained by immigration authorities. *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001)).

II. Respondents' Continued Detention of Petitioner under Section 1225(b)(2)(A) without an Opportunity for Bond is in Violation of the INA.

Respondents argue that Petitioner is an "applicant for admission" under Section 1225(b)(2)(A) of the INA and therefore his detention without bond is valid. Respondents misinterpret and improperly rely on the Supreme Court's decision in *Jennings v. Rodriguez* to support their conclusion that individuals like Petitioner, who entered without inspection and were then apprehended in the interior of the country, are subject to detention without bond throughout their immigration proceedings. Respondents' arguments, as explained below, are contrary to the intent of decades of legislative history and statutory framework. The continued detention of Petitioner without – at the least – an opportunity for bond is in violation of the INA.

A. Respondents' argument is flawed in that The Supreme Court's decision in *Jennings v. Rodriguez* does not support the overbroad conclusion that Section 1225(b)(2)(A) applies to all noncitizens who entered without inspection and are unlawfully present.

First, Respondents argue that the plain language of the statute supports the conclusion that Section 1225 applies to Petitioner and in its reliance Respondents cite the Supreme Court's decision in *Jennings*. In *Jennings*, the Court had, in large part, three main holdings, none of which provide support for the argument that Respondents imply from Jennings. First, (1) the Court held that Section 1225(b)(1) and (b)(2) mandate detention of certain noncitizens throughout the completion of applicable proceedings; Petitioner does not contend that holding.

Second, the Court held that Section 1226(c) mandated detention of certain noncitizens that fall within that statute's scope; Petitioner does not contend that holding. Lastly, the Court reversed a lower-court's ruling that noncitizens had a "statutory right to periodic bond hearings" under the constitutional interpretation of Sections 1225(b)(1), (b)(2), and 1226(c) as a whole; again, Petitioner does not contend that holding regarding periodic bond hearings. Therefore, *Jennings* does not support Respondents' argument that Section 1225(b)(2)(A) broadly applies to noncitizens who entered without inspection and are unlawfully present. This Court should find that the Petitioner is very clearly not an applicant for admission as Respondents contend.

1. The Statutory Definition of "applicants for admission" in Section 1225 covers only certain other noncitizens, not Petitioner.

The plain language of the statute and its subsections show that there are *certain other* individuals who entered without inspection or admission that are considered "applicants for admission" under Section 1225; Petitioner is not one of those individuals. Respondents argue that Section 1225(b)(2)(A) applies to all noncitizens (who entered without inspection or admission) who are apprehended in the interior, even years after they have entered. This interpretation is unsupported by the statutory text. Respondents, relying on *Jennings,* contend that all these individuals are considered "applicants for admission" regardless of any other circumstance. A proper reading of *Jennings* shows that the Court never made such a holding. The plain language of Section 1225(b) and its subsection show that Respondents misunderstand 1225(b)(1).

To have a better understanding, one could look at the title of the statute: "Inspection of Aliens Arriving in the United States AND *Certain Other Aliens Who Have Not Been Admitted or Paroled.*" (emphases added). The title of the statute itself implies admittedly that it can apply to individuals who have not been admitted or paroled, such as Petitioner. However, the title itself

makes clear that this statute only applies to certain other individuals who have not been admitted or paroled, Congress defined who those "certain other aliens" are in the subclauses of the statute.

Section 1225(b)(1)(A)(iii) outlines the "application to certain other aliens" and states that the Attorney General *may* apply clauses (i) and (ii) to "any or all aliens" described in subclause (II). Subclause (II) covers the "Aliens described", which are the *certain other aliens* mentioned in the title of Section 1225. Subclause (II), upon further reading, clearly describes which individuals fall under this "description" of *certain other aliens who have not been admitted or paroled.* Congress carved out a specific subset group of individuals who are not subject to 1225(b)(1), specifically those who "are not described in subparagraph (F), (2) who have not been admitted or paroled into the United States, (3) and who have not affirmatively shown that they have been physically present in the United States continuously for the 2-year period prior to the date of the determination of inadmissibility." This statutory carveout demonstrates that Congress did not intend Section 1225 to sweep in all noncitizens who entered without inspection. Instead, it identifies a narrow subset who meet each of the three criteria above.

Although Petitioner was not admitted or paroled, he can affirmatively show that he was physically present in the U.S. for the 2-year period prior to the determination of his inadmissibility, meaning that he does not fall under the *certain other aliens* as described in Section 1225 as an applicant for admission.

2. This issue is on appeal to the Tenth Circuit, but this District Court has consistently found in favor of Petitioner's argument, and Respondents acknowledge that this District Court will "reach the same result here" as the legal issue is not materially distinguishable.

Respondents state that many courts, including the Fifth Circuit, have agreed with their position but acknowledges that many others have not, including the District of Colorado.

Although there is not a precedential decision in this Circuit the government has appealed to the Tenth Circuit where litigation is pending. Respondents acknowledge that the District of Colorado's "prior ruling on this issue would lead the Court to reach the same result here [], as the facts of this case are not materially distinguishable [] on the legal issue of whether Petitioner is subject to mandatory detention under 8 U.S.C. 1225(b)(2)." ECF No. 8. Page 3. Though there is not yet a precedential decision, Respondents are correct that this Court should reach the same legal conclusion in this case as it has in other Habeas cases covering the same legal issue. The best guide for this Court, barring a Tenth Circuit precedential decision, remains to be the decisions from the District of Colorado itself, particularly the Chief Judge's opinion in regard to this issue: on December 18, 2025, Chief Judge Brimmer issued a decision in the United States District Court for the District of Colorado in which the Court held "Respondents' argument that § 1225(b)(2)(A) applies to noncitizens already residing in the United States is contrary to the plain language of § 1225" and "[t]herefore, noncitizens who 'have been here for years upon years and never proceeded to obtain any form of citizenship . . . are not 'seeking' admission' as defined in § 1225(b)(2)(A)" and that "the scope of Section 1225 does not cover noncitizens" like Petitioner, who "is being detained under 8 U.S.C. 1226(a)" and whose continued detention without the opportunity of a bond hearing violates Section 1226(a). *Florez Marin v. Baltazar, et. al.*, Case No. 25-cv-03697-PAB, Doc. No. 11 (D. Colo Dec. 18, 2025). The District of Colorado has consistently ruled in favor of bond hearings pursuant to Section 1226(a). *See, e.g.*, *Garcia Cortes v. Noem,* Case No. 25-cv-02677-CNS, Docket No. 9 (D. Colo. Sept. 25, 2025); *Loa Caballero v. Baltazar*, Case No. 25-cv-03120-NYW, Docket No. 19 (D. Colo. Nov. 5, 2025); *Hernandez v. Balatazar*, Case No. 25-cv-03094-CNS, Docket No. 27 (D. Colo. Nov. 3, (2025). Therefore, this Court should find that Respondents' attempted dismissal of Petitioner's

arguments due to citation of non-precedential decisions is non-persuasive because the District of Colorado's prior decisions on the same issue have consistently ruled in favor of Petitioner's argument that he is subject to 8 U.S.C. §1226 and therefore eligible for the opportunity of a bond hearing. Respondents do not seem to contend that the Court will find such a conclusion, but simply expresses Respondents' opposition and intent to preserve legal issues for appeal.

3. Respondents' Interpretation of Section 1225 would in fact render Section 1226 superfluous and this Court has agreed that Congress' legislative history does not support the conclusion that Petitioner's Detention is controlled by Section 1225.

In the December 18, 2025 decision from the District of Colorado, the Court held that "Congress's amendment of § 1226 supports petitioner's argument that § 1226 applies to him rather than § 1225(b)(2)(A)" because "Section 1226(c)(1)(E), as respondents concede, 'mandates detention for a narrow category of noncitizens who entered the country without inspection: those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes," and that "[t]his provision would be meaningless if noncitizens already residing in the United States were all subject to mandatory detention under § 1225(b)(2)." *Florez Marin v. Baltazar, Case No. 25-cv-03697-PAB, Doc. No. 11 (D. Colo. Dec. 18, 2025).*. Therefore, the Chief Judge held, the continued detention of a noncitizen situated in a position as described by those in the Bond Eligible Class of *Maldonado Bautista* is a detention in violation of Section 1226(a) because Respondents' interpretation of the respective Sections would render certain sections of 1226 meaningless. This Court should find that same conclusion in this case.

4. **The Court in *Jennings* states that Section 1226 very clearly applies to individuals already present in the United States and the plain language does not exclude those who entered without inspection or admission despite Respondents' "term of art" argument.**

The Court in *Jennings* stated that the language of Sections 1225(b)(1) and (2) is quite clear that "they unequivocally mandate that aliens falling within their scope 'shall' be detained." 583 U.S. at 300-303. As discussed above, that group of people is clearly defined throughout the subsections and subclauses. Petitioner is not included in that description.

The Court said that although Sections 1225(b)(1) and (2) are "quite clear it still held that the plain language of Section 1226(c) is "even clearer." 583 U.S. at 300-03. "As noted," the Court stated, "Section 1226 applies to aliens *already present in the United States*." (emphasis added). *Id* at 303. A proper reading of that would imply that noncitizens who entered without inspection or admission but are already "present" in the United States are governed by Section 1226 and eligible for bond. That interpretation is quite clear and to suggest otherwise contradicts the Court's ruling and this Court should dismiss Respondents' "terms of art" as contrary to the plain language.

5. **Because Petitioner Is Not an Applicant for Admission Under Section 1225, Congress Intended that the Petitioner Receive a Bond Hearing Under Section 1226**

As explained in the sections above, there are certain individuals who have entered without inspection or admission and are still classified as "applicants for admission" under Section 1225; Petitioner is not one of those individuals. The plain language and statutory construction of the statutes lay out a very clear definition and description of which individuals are applicants for admission under that statute and Petitioner very clearly does not fall within that

category. Therefore, he is not an applicant for admission and is eligible for relief under Section 1226, if he meets all other requirements.

Congress created Section 1226, authorizing release on bond, for all noncitizens alike so long as they meet the requirements. There is no distinction between those who are inadmissible or deportable under the Act. In fact, the only distinction between Sections 1182 and 1227 mentioned in Section 1226 is that certain inadmissibility offenses make a noncitizen subject to mandatory detention and certain deportability offenses make one subject to mandatory detention. If Congress had intended for Section 1226 not to apply to noncitizens who entered without inspection, it would have said so expressly. Congress has long demonstrated its ability to distinguish between noncitizens who entered without inspection and are therefore subject to grounds of inadmissibility, and those who entered with inspection and are subject to deportability. Congress expressly relied on this distinction when identifying which inadmissibility and deportability offenses trigger mandatory detention. Had Congress intended to exclude individuals who entered without inspection from Section 1226, it would not have created or depended upon this clear statutory distinction. For the reasons above, Petitioner does not argue that all noncitizens have a right to bond hearing, but that he is not an applicant for admission and is therefore eligible for a bond hearing as a form of relief.

III. Petitioner's inclusion in the Bond Eligible Class under *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) and the Legislative History of Section 1226 further supports Petitioner's argument, that Section 1226 does apply to Petitioner, that he is entitled to a bond hearing, that he has shown he has a due process right to that hearing, and would suffer prejudice if that hearing is denied.

1. Petitioner is a class member under Maldonado Bautista v. Santacruz and therefore should be granted a bond hearing.

On December 18, 2025, the U.S. District Court Central District of California entered a final judgment certifying a class-action and that class' rights from a certification filed by the named-petitioner who represents a class known as the "Bond Eligible Class" which this Petitioner is a class-member of. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025).

The U.S. District Court for the Central District of California held:

> The Bond Eligible Class is CERTIFIED as to Petitioners' claims that the DHS Policy violates the INA and Due Process. The class certified is defined as follows: Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. U.S. District Court Central District of California *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al.* (November 25, 2025)

Based on those parameters, Petitioner is clearly a class-member represented in this Bond Eligible Class that is eligible for bond even though they entered without inspection or admission, which undercuts the entirety of Respondents' argument.

The Central District of California, in a subsequent Order Granting Plaintiff Petitioners' Motion to Enforce Judgment, has vacated the BIA's decision in *Matter of Yajure Hurtado*, 29 I.

& N. Dec. 216 (BIA 2025), which enacted Respondents' policy of claiming authority to detain persons such as Petitioner under 8 U.S.C. § 1225(b)(2)(A), "as contrary to law under the [Administrative Procedure Act ("APA")]" pursuant to the District Court's authority under U.S.C. Section 2202. *Maldonado*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 116 (C.D. Cal., Feb. 18, 2026).

2. The legislative history surrounding Section 1226 supports the finding that Petitioner is not an applicant for admission.

Further, the legislative history surrounding Section 1226(c) supports the argument that Congress could have explicitly written that noncitizens who entered without inspection or admission are not eligible for bond. Even in the most recent amendment with the Laken Riley Act in January 2025, the only amendments that Congress made were to add more grounds of inadmissibility that would subject someone to mandatory detention, namely that an alien is inadmissible on certain grounds *and* has been arrested for, charged with, convicted of, or has committed certain enumerated crimes. 8 U.S.C. §1226(c)(1)(E). The refusal to simply state "all inadmissible offenses" lead to mandatory detention is quite loud. This Court should find that the statutory interpretation, the constitutional construction, the District Court's class-action, and the legislative history surrounding Section 1226 all support the argument that Petitioner is not an applicant for admission, and he is entitled to a bond hearing.

3. Petitioner has a due process right to a bond hearing.

Respondents argue that Petitioner has not shown that he has a due process right to a bond hearing; this argument is misplaced because the statutes enacted by Congress clearly show that Petitioner has a statutory right to a bond hearing. The relevant statute, Section 1226, authorizes the arrest, detention, and release on bond or conditional parole; the right to have a bond hearing is available to those not subject to mandatory detention under Section 1226(c) and

Petitioner does not fall under one of the grounds for mandatory detention. Therefore, he has a due process right to a bond hearing.

4. **Petitioner has shown prejudice by not being granted a bond hearing.**

Petitioner is entitled to a bond hearing because, as explained above, the plain language, legislative history, and prior decisions by this Court itself, all support Petitioner's argument that he is subject to removal proceedings under Section 1226 and therefore eligible for the opportunity of a bond hearing and his continued detention without that opportunity is in violation of the INA. Secondly, Petitioner has suffered prejudice due to his continued detention without the opportunity for bond because Respondents continue to deny him a bond hearing that he is statutorily eligible because of its erroneous contention that he is subject to an inapplicable statute, Section 1225 instead of Section 1226.

In this case, the prejudice suffered by Petitioner is clear: he was detained despite having committed no crimes or offenses that would make him subject to mandatory detention; he was detained despite his numerous family ties in the United States, including his U.S. citizen children; he has been continuously detained without the opportunity of a bond hearing. Petitioner's detention and denial of a bond hearing have caused him prejudice and continue to cause him prejudice.

The facts in this case show a an uncertain future and uncertain amount of time in detention for Petitioner. As of today, he does not have a bond hearing, his removal proceedings are before the BIA and he has not received a decision or even a briefing schedule for his appeal. *See* ECF No. 1, Ex. 2. Petitioner has no idea of when he will be released and allowed to see his family. Petitioner was living in the United States as a hard worker, as a family man and member

of his community before he was unceremoniously arrested and detained by ICE without notice. The approximate seven months that he has been in detention without the opportunity for bond are seven months too long and he will prove at an eventual Bond Hearing that he is not a danger to the community nor a flight risk.

Therefore, the Respondents are in violation of Petitioner's Due Process rights because the statutes enacted by Congress clearly show that Petitioner has a statutory right to a bond hearing, the prior decisions are in favor with Petitioner's argument, and the legislative history continues to support Petitioner's argument. The relevant statute, Section 1226, authorizes the arrest, detention, and release on bond or conditional parole; the right to have a bond hearing is available to those not subject to mandatory detention under Section 1226(c) and Petitioner does not fall under one of the grounds for mandatory detention. Therefore, he has a due process right to a bond hearing while he awaits the conclusion of his removal proceedings.

CONCLUSION

For the reasons discussed above, the Petitioner prays that this Court will grant his original Prayer for Relief.

Date: February 27, 2026

Respectfully Submitted,

/s/ Scott Brian Petiya
SCOTT BRIAN PETIYA
Colorado Bar No. 48359
Monclova Law. P.C
1745 S Federal Blvd
Denver, CO 80219
(303) 974-5049
scott@monclovalaw.com

Attorney for the Petitioner

CERTIFICATE OF SERVICE

I certify that on February 27, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by email:

benjamin.gibson@usdoj.gov

/s/ Scott Brian Petiya
Scott Brian Petiya