UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1: 26-cv-00556-SKC-KAS

LUIS DANIEL YANEZ CHAVEZ,

Plaintiff-Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;
PAMELA BONDI, Attorney General of the United States, in her official capacity;

Defendants-Respondents.

PETITIONER-PLAINTIFF'S REPLY TO RESPONDENT-DEFENDANTS' RESPONSE (ECF 15)

I. Introduction

The dispositive question before this Court is not new. Defendants-Respondents' ("Defendants") erroneously claim that their authority to jail Plaintiff-Petitioner ("Mr. Yanez Chavez") is pursuant to 8 U.S.C. § 1225(b)(2) because he entered the United States without inspection ("EWI") years ago. See generally ECF 15; ECF 15-1. This Court already held at least four times that Defendant's position is wrong. *Hernandez v. Baltazar,* No. 1:25- cv-3688-SCK-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025)*; Perez Zepeda v. Hagan, et al.,* No. 1:25-cv-03789-SKC, ECF No. 18 (D. Colo. Jan. 27, 2026.)*; Marrero Yera v. Baltazar, et al.,* No. 1:26-cv-00476-SKC-SBP, 2026 WL 472014 (D.Colo. Feb. 19, 2026); *Lopez de Leon v. Baltazar et al.*, 1:26-cv-00555-SKC-SBP, ECF 17 (D. Colo. Feb. 20, 2026). In fact, Chief Judge Brimmer acknowledged that Defendants' position "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta v. Noem,* No. 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026).

Defendants concede that the dispositive issue here "*does not* materially differ factually or legally from *Hernandez* with respect to whether 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), or whether such a noncitizen is entitled by § 1226(a) to seek a bond hearing . . . ." ECF 15, at *2 (emphasis in original). Defendants provide no new or convincing argument for this Court to change course. This Court should grant Mr. Yanez Chavez's petition forthwith and order his immediate release.

II. Plaintiff's Incarceration is Pursuant to § 1226.

"Where, as here, a party files a response to a motion but does not address all arguments which the motion raises, the party has effectively conceded the arguments which it does not address." *Alfaro Herrera v. Baltazar*, 1:25-cv-04014-CNS, 2026 WL 91470, at *5 (D. Colo. Jan. 13, 2026) (citation omitted); *See United States v. Hunter*, 739 F.3d 482, 495 (10th Cir. 2013) (concluding that cursory argument not meaningfully developed by any analysis or citation is deemed waived). Mr. Yanez Chaves does not concede that Defendants' attachment of a response in a different case sufficiently addresses Mr. Yanez Chavez's arguments.[1] To the extent the Court finds that it does, then what is good for the goose is good for the gander; attached hereto as Exhibit 1 are the relevant replies in *Mendoza Gutierrez v. Baltazar*, No. 25-cv-02720-RMR, 2025 WL 2962908 (D. Colo.), *appeal docketed*, No. 25-1460 (10th Cir. Dec. 15, 2025). As Judge Rodriguez decided in *Mendoza Gutierrez*, Defendants' position regarding which statute applies to people like Mr. Yanez Chavez is erroneous. *See Mendoza Guiterrez v. Baltasar*, No. 25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025). This Court agrees, *e.g.*, *Marrero Yera*, 2026 WL 472014, and Defendants' arguments to the contrary are unpersuasive.

Defendants also unconvincingly and without analysis cite the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*,--- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). ECF 15, at *3. Defendants provide no reason to deviate from this Court's

[1] Judge Sweeney said it best: "Respondents' submission of an additional 30-page brief (on top of its five-page response) does not help to conserve judicial resources and is otherwise unpersuasive for the same reasons explained herein." *Singh v. Baltazar*, ---F.Supp.3d---, 2026 WL 352870, at *1 n.1 (D. Colo. Feb.9, 2026).

agreement with District Judge Sweeney's "surgical[] dismantl[ing]" of the majority's opinion in *Buenrostro-Mendez. Marrero-Yera*, 2026 WL 472014, at *2 (citing *Singh*, 2026 WL 352870, at **3–6).

Defendants' response also "twist[s] the Supreme Court's decision in *Jennings*" to support their erroneous position. *Espinoza Ruiz v. Baltazar*, No. 1:25-cv-3294762, 2025 WL 3294762, at *2 (D. Colo. Nov. 26, 2025). Courts in this District have repeatedly found Defendants' analysis of *Jennings* incorrect. *E.g.*, *Martinez v. Baltazar*, 26-cv-00106-PAB, 2026 WL 194163, at *3 (D. Colo. Jan. 26, 2026). Indeed, this Court noted the same, finding "like the myriad others to have addressed this same argument[,]" *Jennings* does not support Defendants' position. *Hernandez*, 2025 WL 3718159, at *5.

Defendants do not present any meaningful challenge to this Court's previous rulings finding their interpretation of §§ 1225(b)(2) and 1226(a) erroneous. The Court should therefore rule in Mr. Yanez Chavez's favor and grant his Petition expeditiously.

III. The Appropriate Remedy is More than a § 1226(a) Bond Hearing

Under the circumstances "detention without a bond hearing amounts to a due process violation." *Garcia Cortes v. Noem*, 1:25-cv-02677-CNS, 2025 WL 2652880, at *4 (D. Colo. Sept. 16, 2025). Immediate release is the appropriate remedy in these circumstances. If this Court were to order a § 1226(a) bond hearing instead of release, due process requires specific remedies to address Defendants' lawlessness.

a. Immediate Release is the Appropriate Remedy because Defendants have Not Provided a Valid Basis for Mr. Yanez Chavez's Incarceration.

The appropriate remedy here is immediate release. This Court ordered a petitioner under indistinguishable facts immediately released because Defendants "offered no lawful basis for his detention[.]" *Lopez de Leon*, 1:26-cv-00555-SKC-SBP, at *5. There, like here, the relevant Notice to Appear checked the box stating that the noncitizen was present in the United States without being admitted or paroled. *Compare id.*, at *4 (discussing the contents of the petitioner's notice to appear and acknowledging that it did not, *inter alia*, check the arriving noncitizen box) *with* ECF 4-3 (Mr. Yanez Chavez's notice to appear, also alleging presence without admission or parole and not checking the arriving noncitizen box). The similarities continue.

The Court noted in *Lopez de Leon* that Defendants "had an opportunity in their papers to argue in the alternative that Mr. Lopez de Leon was subject to detention under § 1226 or provide some evidence that a warrant for his arrest had been issued." *Lopez de Leon*, 1:26-cv-00555-SKC-SBP, at *5. They did not, and this Court ordered immediate release because "[f]orcing a detainee to wait for a hearing for days or weeks more in custody—under who knows what conditions—when he is not lawfully detained in the first place would gut the purpose of habeas review." *Id.* (quotation and citation omitted). Defendants arguments and position here suffer from the same fatal flaws.

Defendants try to avoid this outcome by citing to Mr. Yanez Chavez's purported concessions regarding the relevant statute of detention. ECF 15, at *8 (citing ECF 1). That is beside the point; Defendants must "defend [their] actions *based on the reasons*

it gave when it acted . . . ." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020) (emphasis added); *Marrero Yera*, 2026 WL 472014, at *2. Defendants have repeatedly—in its actions and in its briefing—maintained that its authority to jail Mr. Yanez Chavez is pursuant to § 1225(b)(2). As the Supreme Court in *Regents* made clear, Defendants must defend their actions based on the reason they give. *Id.* Defendants provide no reason for Mr. Yanez Chavez's continued incarceration beyond its erroneous interpretation of the statute. This Court should order ICE to immediate release Mr. Yanez Chavez.

b. Assuming, *arguendo*, this Court Does Not Order Immediate Release, the Forthcoming Bond Hearing Must Include Procedural Protections.

Defendants' acknowledgment that § 1226(a) is silent as to the burden of proof does nothing to contest that due process requires the government to carry a clear and convincing evidence burden in § 1226(a) bond hearings. Courts across the country now consider that the norm. *See Gomez v. Olson*, 25-cv-15300, 2025 WL 3768242, *6 (N.D. Ill. Dec. 31, 2025) (noting the "overwhelming consensus" that the burden in a court-ordered bonded hearing should be placed on the government). That is also true in this District. *E.g.*, *LG v. Choate*, 744 F.Supp.3d. 1172, 1186 (D. Colo. 2024); *Alfaro Herrara*, 2026 WL 91470, at **10–11 (D. Colo. Jan. 13, 2026); *Vences Nunez v. Baltazar*, 25-cv-04046-RBJ, ECR No. 10 (D. Colo. Jan. 16, 2026).

"Although the Tenth Circuit has not opined on whether the burden" in these circumstances should be on the government, this Court should agree "with other courts in this district, as well as other circuit courts nationwide, that allocating the burden to a noncitizen to prove that he should be released on bond under § 1226(a)

violates due process as it assigns the risk of error to the party with the greater interest in their individual liberty as balanced against the Government's interests." *Alfaro Herrera*, 2026 WL 91470, at *10 (citation and quotation omitted).

Indeed, as Judge Sweeney in *Alfaro Herrera* meticulously details, procedural due process requires the government to carry a clear and convincing evidence burden in § 1226(a) bond hearings. *Id.* at **10–12. At the outset, two threshold and commonsense considerations support that conclusion. First, "requiring a noncitizen to prove that they are *not* a flight risk and *not* a danger to the community is an inherently more difficult burden to meet than proving the affirmative because, as a practical matter, it is never easy to prove a negative." *Alfaro Herrera*, 2026 WL 91470, at * 10 (quoting *Elkins v. United States*, 364 U.S. 206, 218 (1960) (emphasis in original)). On the other hand, "the government is far better positioned to prove their case than a detained noncitizen given that there is no right to counsel . . . and that by virtue of their detention, [they have] 'little ability to collect evidence.'" *Id.* (quoting *Moncrieffe v. Holder*, 569 U.S. 184, 1 (2013)). The government has "substantial resources to deploy" and shifting the burden to the government for it to utilize those resources reduces the risk of erroneously depriving a noncitizen of liberty. *Id.* (quotation omitted). Second, "placing the burden on the government is consistent with Supreme Court decisions that have repeatedly held that the government must bear a high burden of proof to justify its interest in [a] person's continued civil detention." *Id.* (citations omitted).

Turning to the *Mathews* factors, each weighs heavily in Mr. Yanez Chavez's

favor. First, the private liberty interest at stake is the most significant liberty interest there is, the interest in being free from imprisonment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from bodily restrain has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). "Even those who face significant constraints on their liberty or those over whose liberty the government wields significant discretion retain a protected interest in their liberty." *Rosado v. Figueroa*, CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 at *11 (D. Ariz. Aug. 11, 2025); *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1030 (N.D. Ca. Jul. 17, 2025) (citations omitted) (same). "When assessing this factor, courts consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration." *Rosado*, 2025 WL 2337099, at *13. Courts in this district have repeatedly found that the Aurora Facility "strongly resemble[s] penal confinement" and that the conditions there "are abhorrent." *Arostegui-Maldonado v. Baltazar*, 794 F.Supp.3d 926, 940 (D. Colo. 2025). This factor weighs heavily in Mr. Yanez Chavez's favor

Second, "the risk of erroneous deprivation of [Mr. Yanez Chavez's liberty interest] through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards also weighs in [Mr Yanez Chavez's] favor." *Alfaro Herrera*, 2026 WL 91470, at *11 (quotation omitted and cleaned up). As discussed *supra*, the government has "extensive resources and expertise in immigration law, is better equipped to properly collect and present evidence . . . ." *Id.* Moreover, proving

a negative is inherently "never easy." *Elkins*, 364 U.S. at 218. This factor too weighs in Mr. Yanez Chavez's favor.

Finally, the Government has no interest in jailing people "who are neither dangerous nor a risk of flight." *Alfaro Herrera*, 2026 WL 91470, at *11. In fact, "shifting the burden of proof to the Government to justify continue detention promotes the Government's interest . . . in minimizing the enormous impact of incarceration in cases where it serves no purpose." *Id.* (quotation omitted).

In sum, due process requires the government to carry a clear and convincing evidence in any § 1226(a) bond hearing. *Id.* at 12; *L.G.*, 744 F.Supp.3d at 1186; *Mendoza Gutierrez*, 2025 WL 2962908 at *10. It also requires the neutral adjudicator to consider the noncitizen's ability to pay, otherwise the setting of bond would be untethered from its sole purpose—to secure the noncitizen's presence at future obligations. *U.S. v. Salerno*, 481 U.S. 739, 754 (1987) ("bail must be set by a court at a sum designed to [prevent flight] and no more") (citation omitted); *Hernandez v. Sessions*, 872 F.3d 976, 991 & n.4 (9th Cir. 2017) ("a bond determination that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests"); *Hernandez, et.al. v. Garland et.al.*, No. EDCV 16-620 JGB (KKx), 2022 WL 1176752 (C.D. Cal. Mar. 28, 2022) (settlement agreement delineating that DHS must consider financial circumstances and ability to pay bond); *Sheikh v. Choate*, 1:22-cv-01627-RMR, 2022 WL 17075894, * 5 (D. Colo. Jul. 27, 2022) (grant of habeas corpus ordering a bond hearing at which IJ must consider ability to

pay); *Viruel Arias v. Choate*, 1:22-cv-02238-CNS, 2022 WL 4467245, *5 (D. Colo. Sept. 26, 2022) (ordering the IJ to "meaningfully consider alternatives to imprisonment such as community-based alternatives to detention including release, parole, as well as petitioner's ability to pay a bond"); *Lopez-Romero v. Lyons*, 2:25-cv-01113, 2026 WL 92873, *7 (D.N.M. Jan. 13, 2026) (same). Senior Judge Jackson recently ordered the same. *Castillo Cabral v. Baltazar, et al.*, 1:26-cv-00418-RBJ, ECF 14 (D. Colo. Feb. 19, 2026) (attached as Exh. 2).

In *Castillo Cabral,* Judge Jackson also enjoined Defendants' from imposing additional restrictions on liberty not ordered by the IJ and from invoking the automatic stay on the grounds that it is appealing a grant of bond. *Id.* at *14. These remedies are necessary and sensical. In fact, this Court agrees, finding the automatic stay violative of procedural due process and enjoining Defendants from imposing an ankle monitor or other conditions not specifically imposed by an IJ. *Balderas Rivas v. Baltazar, et al.*, 1:26-cv-00442-SCK, 2026 WL 444732 at *4 (D. Colo. Feb. 17, 2026). And in *Lopez de Leon*, this Court permanently enjoined Defendants from re-detaining Mr. Lopez de Leon under the government's misapplication of § 1225(b)(2). *Lopez de Leon*, 1:26-cv-00555-SKC-SBP, at *6.

Defendants do not provide a compelling reason for this Court to deviate from these conclusions. Doing so would permit ICE to circumvent this Court's consistent rulings that their actions are unlawful. Despite its best efforts, "ICE is not a law unto itself." *Juan T.R. v. Noem*, 26-cv-01017 (PJS/DLM), 2026 WL 232015, at *1 (D. Minn. Jan. 28, 2026). Respectfully, this Court must unfortunately remind ICE of that again.

IV. Conclusion

Based on the foregoing, this Court should grant Mr. Yanez Chavez's petition and order ICE to immediately release him from all forms of custody. Alternatively, the Court should order a bond hearing at which the government must carry a clear and convincing evidence burden to establish that continued detention is necessary where the IJ must consider his ability to pay.

Dated: February 24, 2026

Respectfully submitted,

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AI CERTIFICATION

Pursuant to the Court's Standing Order regarding the use of Generative Artificial Intelligence ("AI") in court filings, undersigned counsel certifies that AI was not used to draft this filing.

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

/s/ Conor T. Gleason
Conor T. Gleason