

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:26-cv-00777

JOSE MILLAN OLIVAS,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office of U.S.
Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs
Enforcement;
MARKWAYNE MULLIN¹, in his official capacity as Secretary of U.S. Department of Homeland
Security; and
PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents.

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

Petitioner JOSE MILLAN OLIVAS, by and through undersigned counsel, respectfully submits this reply in support of his Petition for Writ of Habeas Corpus and in response to Respondents' response dated March 5, 2026.²

¹ Pursuant to Fed. R. Civ. P. 25(d), Markwayne Mullin, in his official capacity as Secretary of U.S. Department of Homeland Security, has automatically been substituted as a party to this action.

² Olivas and Respondents disagree regarding the operative filing deadline. Respondents argue that their response deadline began only when they "received" the overnight mailing on March 2, 2026, while Olivas maintains service was completed on February 27, 2026. ECF No. 9. The Court ordered Olivas to serve Respondents by e-mail and overnight mail and directed Respondents to respond within three days of service. ECF No. 4. The Petition and Order were transmitted by email on February 27, 2026, and the overnight package was tendered for delivery the same day. ECF No. 5. Under the plain terms of the Court's Order, service was completed on February 27. *See* Fed. R. Civ. P. 5(b)(2)(C), (E).

Olivas raises this issue out of concern that if Respondents' interpretation is accepted, that interpretation would allow a party—particularly a repeat litigant before this Court—to effectively rewrite court ordered deadlines whenever doing so proves convenient. Under Respondents' approach, the operative date of a deadline would no longer be

Respondents do not dispute the facts surrounding the events that led to Olivas's detention. Olivas is an eighteen-year-old high school student who has spent virtually his entire life in the United States. On February 2, 2026, after nearly six months in Laramie County custody, every criminal charge against Olivas was dismissed and he became legally entitled to leave custody and resume liberty. Instead, on February 5, 2026, more than 48 hours after he was entitled to release, Respondents arrested Olivas without a judicial warrant and without an administrative warrant. The regulations governing immigration arrests require that such seizures be supported by a properly issued warrant or fall within a narrow set of statutory exceptions, none of which were present here.

Respondents do not dispute that timeline. They do not contend that a warrant existed, that the required custody determination occurred, or that the regulatory safeguards governing immigration arrests were followed. Nor do they attempt to explain how a warrantless arrest of a young man already confined in a secure jail facility—after the expiration of the detainer period—can be reconciled with the governing regulatory framework, the Fourth Amendment, or the Fifth Amendment's guarantee of due process.

Respondents' arrest of Olivas violated both the governing regulatory framework and the Constitution from the moment it occurred. By disregarding those requirements and seizing Olivas after he had already been released from criminal custody, Respondents subjected him to a warrantless civil arrest unsupported by any lawful authority. This conduct not only violated the plain regulatory limits placed on immigration officers but also resulted in a deprivation of liberty

determined by the Court's order or the Federal Rules, but by the responding party's internal receipt practices. That rule would significantly undermine the enforceability of expedited orders like the one issued here. Court ordered deadlines cannot function if a party may disregard the triggering event identified by the Court and substitute a different one of its own choosing. The Court should therefore reject Respondents' attempt to recalculate the deadline and should apply the plain terms of its Order.

without due process and without the prompt probable cause determination required by the Fourth Amendment.

Respondents failed to meaningfully respond to specific factual and legal allegations demonstrating unlawful detention and focus almost exclusively on a statutory interpretation question that this Court has already resolved and advance jurisdictional arguments unsupported by the cases they cite. Their briefing therefore leaves the Petition's factual and constitutional arguments unrebutted. Respondents' failure to address the Petition's central constitutional claims further supports granting habeas relief.

ARGUMENTS

I. Respondents Failed to Rebut the Petition's Due Process Challenge to the Legality of Olivas's Detention

The sole argument presented by Respondents regarding the legality of Olivas's arrest is that this Court lacks jurisdiction, citing *Min-Shey Hung v. United States*, 617 F.2d 201 (10th Cir. 1980). That reliance is misplaced. *Min-Shey Hung* does not bar this Court from reviewing Olivas's claims. Moreover, because Respondents failed to substantively respond to the factual and legal arguments presented in the Petition, the Court should deem those arguments conceded and grant the Petition.

In *Min-Shey Hung*, the petitioner was arrested without a warrant by the INS on March 22 and issued an Order to Show Cause. *Min-Shey Hung v. United States*, 617 F.2d 201, 201-02 (10th Cir. 1980). Following the issuance of the Order to Show Cause, the District Director conducted a custody redetermination and released the petitioner on bond on March 23, and the petitioner filed a habeas action on March 28. *Min-Shey Hung*, 617 F.2d at 202.

The Tenth Circuit held that habeas relief was not available on those facts because the initial warrantless arrest had been cured when the District Director, promptly conducted the custody

redetermination required by the governing regulatory scheme. *Id.* In other words, whatever defect may have existed at the moment of the warrantless arrest did not persist once the agency made the prompt custody determination contemplated by the regulations and the petitioner was released from custody. The court therefore treated the petitioner's challenge as an attack on the deportation proceedings themselves rather than a challenge to ongoing detention.

This case presents the opposite posture. First, unlike the petitioner in *Min-Shey Hung*, Olivas remains in custody. His habeas petition therefore challenges a present and ongoing deprivation of liberty. Habeas jurisdiction exists precisely for this purpose, to allow a federal court to review the legality of present physical detention. The question before the Court is not whether Respondents properly initiated removal proceedings, but whether Respondents may continue to detain Olivas following an initial detention in violation of the Constitution, federal statutes, and governing regulations.

Second, the procedural safeguard that cured the defect in *Min-Shey Hung* never occurred here. In that case, the District Director made a prompt probable cause determination and conducted a custody redetermination within roughly 24 hours of the arrest. By contrast, as detailed in the Petition, Olivas did not receive a custody determination within 48 hours of Respondents taking him into custody. The absence of that prompt determination is precisely the constitutional defect Olivas challenges. Thus, the procedural mechanism that the Tenth Circuit relied upon in *Min-Shey Hung* to conclude the detention had been regularized is absent here.

Third, Respondents' attempt to convert this case into a collateral attack on removal proceedings mischaracterizes the Petition. Olivas does not challenge the validity of any removal order or the merits of the immigration charges against him. Instead, he challenges the legality of Respondents' conduct in arresting and detaining him without complying with the statutory and

regulatory procedures that safeguard against erroneous deprivation of liberty. That type of claim falls squarely within the traditional scope of habeas review.

The same distinction renders *Aguayo* inapplicable. *Aguayo* involved a challenge to the validity of a removal order itself—an issue that Congress has directed to the courts of appeals through the petition-for-review process. *Aguayo v. Garland*, 78 F.4th 1210 (10th Cir. 2023). This case presents a fundamentally different claim. Olivas does not ask this Court to review a removal order or interfere with the adjudication of his removal proceedings. He asks the Court to determine whether the government may continue to detain him in violation of the Constitution and the agency's own governing procedures.

Nothing in *Min-Shey Hung*, *Aguayo*, or any other authority cited by Respondents holds that federal courts are barred from reviewing whether immigration officials are complying with their own statutory and regulatory limits on detention. To the contrary, a writ of habeas corpus may be granted to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3); *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (concluding that the Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States" (citing U.S. Const., Art. I, § 9, cl. 2)).

Respondents' briefing conspicuously avoids addressing the core factual allegations set forth in the Petition. They do not dispute the timeline of Olivas's arrest, the absence of a prompt custody determination, or the procedural deficiencies described in detail in the Petition. Instead, Respondents rely solely on a jurisdictional argument that mischaracterizes both the facts and the governing precedent. Where a party fails to meaningfully respond to specific factual and legal allegations, courts routinely deem those arguments conceded.

Ultimately, Respondents' jurisdictional argument collapses because it rests on a category error. They treat Olivas's Petition as though it challenges the initiation of removal proceedings. It does not. The Petition challenges the legality of the government's present detention of Olivas and the failure to provide the procedural protections required by law.

The Court has jurisdiction to hear this Petition. Under section 2241, federal courts have jurisdiction to order the release of a prisoner who is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. Because Olivas does not challenge the removal order but instead challenges the violation of his Fourth Amendment right when he was arrested and his continued detention, the Court has jurisdiction to decide the questions raised about the lawfulness of his current detention.

II. Respondents Do Not Meaningfully Dispute that Olivas is Entitled to a Bond Hearing Under 8 U.S.C. § 1226(a).

Respondents do not meaningfully contest the central statutory argument presented in the Petition. Instead, they acknowledge that this Court has already rejected the very interpretation they advance. *See Vasquez Gomez v. Bondi*, No. 26-cv-00489-NRN (D. Colo. 2026). Respondents expressly concede that "this Court's prior ruling on this issue would lead the Court to reach the same result here" because "the facts of this case are not materially distinguishable." ECF No. 9 at 3.

That concession is dispositive. Where a party acknowledges that controlling precedent from the same court resolves the issue and that the facts are materially identical, the court need not revisit the argument. Respondents' disagreement with the Court's prior reasoning does not alter the governing law applicable to this case. Until the Tenth Circuit rules otherwise, this Court's prior interpretation of the detention statutes remains the most directly applicable authority governing Respondents' conduct in this district.

Respondents' decision to submit an "abbreviated response" therefore does not rebut the Petition. It simply preserves their appellate position. As a result, Respondents offer no substantive reason why this Court should depart from its prior analysis.

REQUESTED RELIEF

Respondents contend that if the Court grants the Petition, the proper remedy is merely to order a bond hearing under 8 U.S.C. § 1226(a). That position ignores both the nature of the violations presented in this case and the broad remedial authority federal courts possess in habeas proceedings. Where detention itself is unlawful, habeas courts have the authority—and the obligation—to order release.

In *Ahedo Salazar v. Dedos*, the New Mexico court analyzed a warrantless arrest by ICE that contained no statutory exceptions to the warrant requirement, and determined that "absent obtaining a warrant, the government was required to secure a prompt judicial probable cause determination to justify Salazar's continued detention." *Ahedo Salazar v. Dedos*, No. 1:26-cv-00251 WJ-JHR (D.N.M. Feb. 27, 2026). (citing *County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991); *Gerstein v. Pugh*, 420 U.S. 103, 107-08 (1975)). The New Mexico court held that the petitioner's immediate release from custody was the appropriate remedy as Respondents obtained no probable cause determination and that on account of those circumstances, the petitioner's continued detention was unreasonable under the Fourth Amendment. *Id.*

In *Singh v. Bondi*, the Oklahoma District Court analyzed a petitioner's warrantless arrest and found that because no such warrant existed, the petitioner was unlawfully detained pursuant to 8 U.S.C. § 1226(a) the moment his detention began. *Singh v. Bondi*, No. CIV-26-43-J (W.D. Okla. Feb. 12, 2026). The Oklahoma Court therefore granted his immediate release. *Id.* (citing *E.P.G. v. Bondi*, No. 26-560 (JRT-EMB), 2026 WL 242266, at *1 (D. Minn. Jan. 29, 2026)

("Where, as here, (1) Respondents erroneously assert that a detainee is being held pursuant to § 1225(b)(2); and (2) Respondents have not produced a warrant, as is required to effectuate an arrest pursuant to § 1226(a) . . . the appropriate remedy is release from custody."); *Chogillo Chafila v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. Sep. 21, 2025) ("To put it simply, Petitioners' detentions are improper because there is no evidence in the record that they were arrested pursuant to a warrant. Since the Government did not comply with the plain language of section 1226(a), their immediate release is justified.").

Taken together, these authorities confirm that when Respondents effect a warrantless arrest, fail to obtain a prompt probable cause determination, and cannot demonstrate compliance with the statutory and regulatory framework governing civil immigration arrests, the resulting detention is unlawful from its inception. Under those circumstances, continued detention does not merely raise a procedural defect—it constitutes an ongoing deprivation of liberty in violation of the Fourth Amendment, the Fifth Amendment's guarantee of due process, and the governing immigration regulations. Where the legal basis for custody collapses at the outset, courts consistently recognize that the appropriate remedy is immediate release from custody and that same result is warranted here.

Respondents do not meaningfully dispute the factual allegations underlying Olivas's constitutional and regulatory claims. They do not contest the timeline of Olivas's arrest, the procedural deficiencies surrounding that arrest, or the failure to comply with the governing regulatory framework. Instead, Respondents largely avoid those issues and focus on a statutory classification argument regarding 8 U.S.C. § 1225(b) and § 1226(a). Where Respondents fails to rebut specific factual allegations demonstrating unlawful detention, courts routinely treat those facts as undisputed for purposes of resolving the habeas petition. In such circumstances, the Court

need not order further administrative proceedings to determine the legality of custody. The undisputed record already demonstrates that Olivas's detention is unlawful.

For these reasons, the Court should conclude that the violations underlying Olivas's arrest and detention render his continued custody unlawful. The appropriate remedy is therefore to grant the writ and order Oliva's immediate release from Respondents' custody.

CONCLUSION

For the foregoing reasons, Respondents' abbreviated response provides no basis for denying the Petition. Respondents effectively concede that this Court's prior ruling resolving the § 1225(b) versus § 1226(a) issue applies equally here, as the facts of this case are not materially distinguishable from the case in which the Court previously rejected Respondents' statutory interpretation. Respondents' disagreement with that ruling does not alter the controlling analysis.

Moreover, Respondents do not meaningfully address the constitutional and regulatory violations underlying Olivas's detention. The Petition establishes that Olivas's arrest and continued detention violate the Fourth Amendment, the Fifth Amendment, and the governing regulatory framework. Respondents do not dispute the factual allegations demonstrating those violations and instead focus almost exclusively on a statutory classification argument that this Court has already rejected.

The Court should grant the Petition for Writ of Habeas Corpus and order Olivas's immediate release from ICE custody. In the alternative, the Court should order Respondents to provide Olivas with a prompt bond hearing before an immigration judge wherein the government bears the burden of proof by clear and convincing evidence that Olivas is a danger to the community or a risk of flight.

Dated this 8th day of March 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2026, I electronically filed the foregoing **Petitioner's Reply in Support Petition for Writ of Habeas Corpus** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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